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**Imprisonment in the Contemporary Imaginaries in the UK:
Nihilism, Innovation and the Performance of Introspective
Normativity**

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Declaration

I declare that this dissertation was composed entirely by me and that no part of it has been submitted to this, or to any other university, as part of a degree.

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World count: 89316

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Abstract

Over the past few decades, the large scale of imprisonment and the heavily-adopted punitive approach as a way of responding to crime have engendered widespread concerns among the public and academia in the UK. Whereas there have been a good number of studies that have investigated their underlying sociological causes and elaborated a variety of accounts of how such phenomena are historically configured and how they may be moderated or reversed, the normative dimensions of the current imprisonment complex have not yet received sufficient examination. This particularly regards the understanding of the tensions between the aspiration for a universal ideal of imprisonment and the reality of highly diverse and fragmented post-welfarist approaches in the incarceration field.

This thesis tries to uncover and account for the dilemmas and problems in the normative sphere of incarceration in the UK. In doing so, it elaborates the analytical-evaluative framework based on the concept of introspective normativity.

Chapter 1 Introduction and Overview

I. Introduction

i. Background

a. Declining prospects for the universal ideal of imprisonment

About half a century ago, there were widespread expectations among criminologists in the UK and the US that the prison would be improved materially with the progress of positive social science and would ultimately become a rationalised institution within the criminal justice system. Many of them - including Norval Morris (1965: 268), one of the leading American criminologists - then believed that the old form of prison would become extinct, and would be replaced by ‘quite different social organizations’ which are more effective and morally defensible in responding to crime and treating offenders. This confidence in the prospects of prison reform was also displayed in the tone of a number of government reports during that period.¹

However, when the pages of the calendar have been turned over to reach the 21st century, the reality that we face appears to be quite the opposite: penal policy-making in these two countries is more often dominated by mass-media fuelled punitive appeals than by thoughtful approaches buttressed by professional knowledge, meanwhile the scale and the proportion of the population that are detained in prisons and other custodial institutions have reached a stunningly high level (Garland, 2001a & 2001b; Simon, 2007; Millie. et al., 2003 and Bosworth, 2010b).

¹ This was reflected in several key post-war government white papers in the UK including *Penal Practice in a Changing Society* (Home Office, 1959) and *The War Against Crime* (Home Office, 1964).

What is notable as well is the blighted faith in the holistic approach per se in making prison a meaningful place for both its inmates and society. The penal welfarist project which promises the social reintegration of prisoners was once embraced as the authoritative route to prison reform, but this approach has waned markedly since the ‘nothing works’ attack in the 1970s. Since its downfall, we cannot yet observe or even envisage any successors which can take its place by providing another holistic paradigm for the purpose of guiding custodial practice. Although in recent years certain elements of the past welfarist scheme - particularly those relating to prisoner-rehabilitation programmes - are found to be reviving in political rhetorics and in a variety of institutional sectors of imprisonment in the two countries, they can hardly be taken as the sign of the resurrection of rehabilitation as a holistic paradigm to transform the whole spectrum of incarceration practice.² Instead, coexisting with multiple divergent and competing approaches in the field, they indicate how diverse and fragmented the normative landscape of imprisonment is.³ Compared with the heyday of the welfarist prison reform project, the perception that the prison system is ‘beyond hope’ is quite overwhelming today and it seems to rule out any attempts to systematically reorganise the prison systems and subject them to thorough moralisation.

What occurred in the imprisonment field is part of the changes in the broad penal realm which has been the subject of analyses in extensive contemporary criminological literature (e.g., Garland, 2001a; Loader, 2006; Allen, 1981 and Martinson, 1974). To understand it properly, we need first of all a clear idea about penal welfarism, the fate of which, as we mentioned above, characterised the very contour of the ‘problem zones’ of the current imprisonment sphere. The major objective of penal welfarism is the rehabilitation and reintegration of offenders, which also sets the organising principle for the penal institutions. In practice, the realisation of the rehabilitative goal relies heavily on the development of ‘human science’, which provides the theoretical tool, expertise and techniques for the individualised assessment and treatment of the offender. The whole network of welfarist penalty can range from the practice of probation, after care, licenced

² See, e.g., Robinson (2008) and Green (2013). We will also discuss this point in Chapter 5 (II.ii).

³ We will elaborate this point at greater length shortly (in section I.i.c).

supervision, reformatory schools and juvenile correction centres to various preventive-detention institutions and ordinary prisons. Under this system each offender or deviant is assessed and categorised according to her own background, history, youth, character and corrigibility, and those highly individualised factors form the basis for the decision-making regarding what particular treatment she is to receive and which institution is to accommodate her. In principle, those who are not yet fully criminalised and who are about to return to normal life after a period of correctional treatment are brought under the supervision of penal sectors which are closest to normal society and whose operational patterns mainly aim to inculcate the proper attitudes and norms so that their candidates can satisfy the requirements of good citizenship (e.g., in the case of probation and after-care). Those whose case is more serious than the former but who are deemed as within the capacity of corrective training are under the authority of treatment programmes in a variety of specialised reformatory institutions as well as prisons. The design of those programmes is oriented to suit differentiated rehabilitative or educational needs of individual offenders. Finally, the 'dangerous offenders' who are judged as incapable of reformation are subjected to the penal patterns which are designed to detain them in secure environment and prevent them from harming the normal society (usually in the form of long-term or indeterminate custody).

Those three major elements of welfarist penalty are summarised by Garland (1985) as the 'normalising', 'correctional' and 'segregative' sectors, which, in their operation, are interrelated with one another. And just as he observes, in spite of the official representation of the welfarist penal patterns which routinely highlight their liberal and modernising features, they form a 'a more extensive and refined network of control' than the previous penal regimes (1985: 234). It is a network which places the population sector which fails (to various degrees) to meet the requirements of the mainstream social order and labour market within the parameters of its discipline and supervision and which in effect serves as the default solution to the unsuccessful integration of civic social institutions (schools, workplaces and families). In this respect, the regime of welfarist penalty has an immanent coercive and suppressive element. Whereas the existence of differentiated penal patterns can somewhat have

the effect of relieving the severity of the suppressive side of welfarist penalty by presenting a variety of relatively mild forms of intervention, its total justification can only be conceived in a more general ideological framework. This is provided in the social ideal which underpinned the flourishing of the welfare state: according to it, a good society should not be a simple aggregate of atomic individuals who are bound to pursue their own fate and face the risks of modern life with their own resources, but should be a moral community which seeks to embrace the individual members with its care and support, and which takes the responsibility to protect them from various risks generated in modern society. In the perspective of this holistic social ideal, the deviants and offenders also fall within the scope of the collective care; their law breaking acts are considered more as the result of personality pathology (which is usually diagnosed in connection with social pathologies) than free and independent choice. The penal process is thus conceived primarily in terms of diagnosis and therapy rather than retribution. Whereas it becomes normatively inappropriate to impose pains and restriction simple to punish, they are justifiable if they are unavoidable in the rehabilitative process, for such imposition is necessary to achieve the desired social inclusion and solidarity, which imply the recognition of the equal membership of deviants and offenders in this community as well.

In the welfarist scheme, the prison functions in tandem with the other sectors of intervention. As Garland (1985: 28) observes, the structural status of the prison in the penal realm amounts to an ‘endpoint on an extended network of “alternatives to imprisonment” and specialist establishments’. Its own practice is then organised and undertaken in accordance with the general aim of rehabilitative and integration, which also serves as the very source of its justification. This means, the use of incarceration is prescribed by the welfarist scheme as the necessary measure for the pursuit of its ideal of social integration and solidarity: the infliction of restriction of freedom and suppression is held as defensible when it is inevitably involved in the correctional process that aims to include the prisoners within this social ideal and protect both them and society.⁴

⁴ Due to the limits of the present work, we can only offer a brief and schematic discussion about the complex of penal welfarism and the prison’s role in it. In the remaining part of the section, however,

Whereas the above discussion is concerned with the contours of the key features of penal welfarism and the role of imprisonment in it, it does not imply that they have uniform performance in all penal realms. In the case of the UK and the US, the penal-welfare approach is observed to emerge in the 1890s, have its rigorous development in 1950s and 1960s and become the established framework in the penal field by 1970s (Garland, 2001a). This process, however, did not result in the total denial of the penal systems that had been in place already; rather, the correctional element was in effect overlapped with the existing legal framework of criminal justice (including the due process principle). In this regard, it is implausible to observe a ‘totalised’ penal welfarist regime in reality: the defining feature and major objective of welfarism – rehabilitation and social integration –had uneven impact on different sectors of penal practice and different jurisdictions. For the same reason, the decline of the welfarist paradigm was also not a thorough and concurrent breakdown. Whereas the ‘nothing works’ attack produced most discernible effect in the US, England and Wales, where the allegiance to the penal welfarist project decreased at a dramatic speed since the 1970s, in Scotland the rehabilitative ideal was kept relatively intact until the mid-1990s (Garland, 2001a and McAra, 2008).⁵

The above discussion about the penal welfarist scheme also outlines what existed right before the current imprisonment complex and thus provides a rather familiar case for comparison. In the paragraphs below, we will see what is acutely absent in the post-welfarist imprisonment field, which creates a crucial predicament for the normative foundation of the contemporary incarceration practice.

Indeed, the material status quo of incarceration may be able to be improved, and even the current ‘punitive’ penal atmosphere may turn out to be ‘volatile’ and reversible, especially when we take into account the fact that crime rates in the two countries have been dropping continuously since the 1990s (O’Malley, 1999; Tonry,

we will try to make further elaboration about its ideological performance and its connection with universal normativity.

⁵ There have been a voluminous body of studies on the social, political and cultural factors underpinning the decline of penal welfarism and its differential situations across jurisdictions; some of those key texts have been mentioned already.

2001a and Zimring, 2007). However, we can hardly expect those potential changes, positive as they may be, to automatically lead to the restoration of the normative integrity of custodial institutions and to reveal a morally desirable future for them. It is a challenge that is more fundamental in nature.

Unlike many other modern institutions, prison is based on the exercise of coercive power and the severe restrictions which are imposed on its inmates. It is not about the distribution and optimisation of economic gains, or equal political participation, but involves the deprivation of an individual's fundamental rights, the pains and sufferings of concrete persons. In contemporary societies which increasingly praise personal choice and mobility, its suppressive and intrusive character stands out rather distinctively. To justify the use of incarceration thus raises standards that are far stricter than those of economic and political institutions.

In the penal welfarist scheme, as we have just discussed, the justification of the coercive aspect of imprisonment was made possible on the basis of the promise of a just and inclusive society which accepts the deviants and offenders as its members as well as the law-abiding majority. The individualistic approach, which was the most prominent penological paradigm that preceded penal welfarism, provided a different solution to this problem. Instead of building the legitimacy of the prison on any ideal of the desired state of society, it resorts to the philosophy of universal moral order which determines both the justifiability and the boundary of punishment. Under this perspective, the offender is viewed as an individual subject who is characterised by the same moral autonomy, reason, liberty as every other free and rationale individual subject in society. Accordingly, as the act of committing crime is associated with the choice of a free moral being, punishment becomes the logic response to it. It is not just morally permissible, but also morally required, for it is the necessary step to restore the normative order disturbed by the unjust behaviour of criminal offense and to hold the subject responsible for what she has chosen to do. One typical case is the late Victorian penal system in the UK. Following the individualistic philosophy of punishment, the imprisonment regime in this period (1865 -1895) was characterised by standardised practice and 'uniformity', which aimed to make sure that the

offenders are treated ‘exactly alike’. On the other hand, the rehabilitative end was just expressed as something to hope for, which was secondary compared to the moral purpose of punishment in the Victorian imagination (Garland, 1985). Though the two previously dominant penal paradigms have stark differences in their ways of moralising the imposition of custody, both of them link the purpose and operational principles of the prison with certain holistic normative schemes. In the absence of a faith in ultimate and universal goodness, it would be considerably harder for those modern penal designers and reformers to conceive a regime whose routine operation involves the imposition of deprivations on individuals as great and fundamental as those that prison imposes.

However, this awkward situation now besets much of the contemporary imprisonment field. In the UK and the US, in particular, the aspiration to formulate universal ideals to guide and legitimise the practice of incarceration is now observably at a low ebb. This is not merely reflected in the abandonment of traditional universal penal ideologies, but also in the particular circumstances in the post-welfarist imprisonment field which render it difficult for any allegiance to a new universal paradigm to take shape and become consolidated. The current imprisonment field is characterised by the coexistence of multiple deeply diversified theoretical approaches, discourses and practical strategies, ranging from resurgent liberal prison policy proposals to ‘prison works’ rhetoric, and from actuarial risk management logic to radical abolitionist claims.⁶ This situation also renders the current normative spectrum of approaches to imprisonment highly fragmentary and divided. The advocates of prisoners’ rights from a liberal point of view, for example, often find themselves in deep disagreement with the ‘tough on crime’ approach and the stringent prison policies buttressed by many tabloid papers and politicians. The disagreement cannot be solved just by promoting a ‘comprehensive’ understanding of the institutional operation of the prison systems; it instead signifies divisions in moral beliefs and normative visions about incarceration and punishment in general.⁷ As the traditional holistic ideal of rehabilitation and social integration has lost much

⁶ We will discuss at greater length the post-welfarist penal imaginary spectrum and also identify some constructive facets of it in a later part of the chapter (section I.i.c).

⁷ See also the discussion of Tonry (2011).

of its grip, such diversions can hardly be treated as more than *a disparity in perspectives* or a *relative matter* in terms of political stands. Consequently, the respective normative approaches in such a context only have finite grounds for establishing the validity of their own claims and refuting contradictory ones. The lack of any prospects for a viable universal normative paradigm in the field may also be reflected in the fact that the pragmatic style of calculation and, conversely, the punitive ‘hit-back’ reaction often stand out distinctively in the contemporary penal sphere (Garland, 1996 & 2001a).

Against the background depicted above, we may argue that the appeal to universal normativity has diminished considerably within the current imprisonment field. This did occur to many other social sectors as well, and is viewed as a rather far-reaching phenomenon in the post-World War era by the political philosophers and social theorists who have had extensive discussion of the decline of the utopian aspiration of modernity (e.g. Strauss, 1964; Berlin, 1978 and Habermas, 1976).

What happened in the field of imprisonment can be viewed as one specific example of the crisis of utopianism in the post-World War II western societies. As we will see more clearly later, on this vantage point we can capture some particular implications of the decline of penal welfarism and the subsequent dynamics in the discursive field regarding the practice of incarceration.

It does not imply, however, that the decline of universalism in the field of imprisonment (particularly the fall of penal welfarism) is directly triggered by or, simply the result of, the ‘utopia crisis’ in the post-World War II western societies. The latter, as chronic and wide-ranging as it is, does not exert its influence on every modern institution evenly and indiscriminately. Some of them (such as the medical and educational institutions) proved to have more resources to re-organise their cognitive structure and ways of practice to meet the challenge so that their routine praxis and outcome can be maintained intact. In those cases, the predicament of universalism does not work as the dominant force that sets up the trajectory of the institutional performance; it tends to be moderated by the reflexive and adaptive

ability of the traditional configuration or orthodox system. But in other cases, the imprisonment field in particular, due to particular reasons (like those we identified in reviewing the fall of penal welfarism) the existing orthodox system was subject to severe oppositions and it was proved not viable enough to preserve its salience by renewing itself to meet the ideological and practical challenges. As it grew weaker and deprived of political credit and public confidence, the resources would also shrink which could be relied upon to bear and minimise the impact of the predicament of universalism. As a result, the phenomenon we discussed earlier concerning the imprisonment sphere – the absence of a holistic ideal of the institutional practice – tends to become a defining feature of the specific domain and render vulnerable the prospects of a new universalist paradigm that can be formed to replace the former.

Thus, as a cultural phenomenon, the post-World War II dystopian trend reaches far beyond the sphere of imprisonment, but its representation is conditioned by the actual situations in each individual case. In this regard, it is implausible to take it as an independent force which would inevitably bring about a pre-determined set of changes across the social sectors indiscriminately. Rather, it is better described as a particular reflexive element which is penetrating in the contemporary social life and institutional practice. The fact that its representation in the imprisonment field in the UK is markedly salient has much to do with the peculiar historical and political factors as we examined above. The fall of the welfarist paradigm, which held the last holistic ideal for penal practice, has made the vacuum of universal normativity particularly salient. The crisis of universal normativity for prisons in the UK, however, is not only related to the salience of its circumstances. The very nature of custodial practice determines that the absence of universal normativity has significant implications for the incarceration institutions. We will elaborate this point in the paragraphs below.

Is it possible for people, as they do in many social institutions other than those of incarceration, just to come to terms with the exhaustion of universal normativity and simply accept it as a bitter heritage of the failed utopian dream of modernity?

Indeed, the absence of any holistic normative ideal of incarceration does not necessarily disturb the conscience of the public. As Richard Sparks (2007a) observes, the practices in prisons are not always at the centre of the radar of the public and the mass media. Instead, they can continue quietly and unproblematically in many places and for a considerable period of time under the control of trusted penal experts and practitioners. Under such conditions, the normative status of those institutions seldom triggers any serious concerns among members of mainstream society. Even in a situation where they start to receive increasing attention from the media (as is being witnessed in the UK and the US nowadays), these public responses scarcely point in the direction of questioning and reflecting on the dilemmas of universal normativity. Instead they tend to lead to investigation of the responsibilities of management personnel or ‘the failure of the system’, and to the allegation that lax prison policies and administration should be held accountable for the problems.⁸ Politicised in this fashion, such public engagement may consequently blur the normative dimensions of the contemporary prison systems to an even greater extent than does the conventional expert-and-practitioner-dominated penal order.

What, then, prevents us from bypassing the malaise within the ideological sphere and concentrating instead on practical tasks – which would produce effects more quickly and tangibly? There are actually many such tasks that need to be addressed with regard to the prison, and some are quite urgent and severe: expanding current prison accommodation so that the overcrowding can be alleviated, increasing gymnastic facilities and educational programmes so that the time spent by inmates behind bars can be made more ‘meaningful’, improving the working conditions of the prison staff, and so on. All of those tasks are without question worthy of a good amount of investment.

However, the aggregate of those problem-solving oriented programmes is unlikely to lead to a favourable outcome, and we will demonstrate shortly that the practicality-

⁸ We will give more detailed discussions of the phenomenon in Chapter 4.

absorbed approach to prison reforms could be profoundly misleading when it brushes away the perspective of and any belief in the ultimate ideal behind such activities.

b. A Kafka-like pursuit: practicality-directed prison reforms

If the prison population is too high, we can choose to put more constraints on delivering a sentence of imprisonment; if the space in prisons is insufficient for accommodating their inmates properly, we can expand or reorganise it; if there are high suicide rates and cases of self-inflicted harms, we can increase and improve the provision of mental health care.

Probably various problems will stand in the way of their realisation: fiscal shortages, public misunderstanding, political intervention, bureaucratic errors, and so on. It is possible that due to such obstacles the accomplishment of those goals is subject to postponement, even to indefinite postponement. But the logic here is clear: it delineates a definite and concrete pathway for prison reformers to follow. The job is then to tackle each of the problems respectively and responsibly and the evolution and improvement of custodial practice may be expected to ensue.

However, the actual history of the prison reform movement tells a story quite contrary to the trajectory that might be anticipated by such a straightforward problem-tackling approach.⁹ Most often, earnest efforts were made and material changes were expected, but then new frustrating aspects of imprisonment emerged in a damaging way and dominated the agenda, while the previously defined targets became uncertain and dubious. One of the most typical cases can be observed in the development of English prison architectures: taking actions to combat the deteriorating ventilation and health conditions was once the primary concern for prison reformers and architecture designers (for the sake of preventing contagious gaol fever), but the solving of this particular problem soon gave way to the more

⁹ See, for example, Keith Soothill's analysis of the history of English prisons from 1776 to 1966 (2007). Also, see Michel Foucault's argument about the paradoxical character of the history of prison reform, which renders prison crisis and reformation discourses two facets of the same circular dynamics of the institution's operations (1977).

demanding one of preventing the contagion of ‘moral corruption’. This concern led to the physical redesigning of prison buildings to suit the operation of the ‘separate-silence’ system; yet such changes were found to generate new devastating results: inmates’ psychological well-being deteriorated with more frequent occurrences of suicide and self-inflicted harms. The subsequent loosening-up of the rigid regulations, in turn, engendered problems of illegal transactions, prisoner escapes and other security concerns, etc.¹⁰

There is no doubt that almost all modern institutions, whether they are schools, hospitals or governments, unavoidably have to experience a continuous process of adjusting their operational objectives to the changing social environment. However, as critics have pointed out, what distinguishes prisons from these institutions is the constant *state of crisis*, which is accompanied by the circulation of contradictory rhetorics and statements of purpose (Foucault, 1977). This situation has scarcely changed in the contemporary UK and US (O’Malley, 1999; Tonry, 2001a; Scott, 2007). Therefore, although prisons in industrialised countries are generally better than their predecessors in the 17th century in terms of their material conditions, they can hardly claim the same degree of success as other modern institutions such as the medical and educational sectors.

The frustrating experience of prison reform is instead rather analogous to what Kafka’s hero ‘K’ experiences in his novel ‘Castle’: his purpose was quite precisely determined (entering the castle), and his target (the castle) also appeared to be concrete and reachable at first sight (it is just above the village in which he resides); however, the real process – as soon as ‘K’ has started his enterprise – proves to be an ominously distorted, prolonged and uncertain one, even if all the obstacles he faced seemed to be of a comprehensible nature (ruthless administrative customs, the arrogance of the castle officials, the ambivalent attitudes of the villagers, the fecklessness of his partner, his own tactical errors, etc). The novel remained an unfinished work, but readers are clear enough about the hopeless prospects of ‘K’’s adventure. Whereas Kafka’s ‘Castle’ exposes some of the deepest facets of the

¹⁰ See the study of Yvonne Jewkes and Helen Johnstone on the evolution of prison architecture (2007).

experiences of individuals in the modern age, the ‘factual story’ that has happened in the sphere of imprisonment also reveals something that is quite comparable to that experience, in particular with regard to the elusive nature of the pursuit of meanings in a context where any overall normative horizon is essentially absent. Perhaps that is the reason why the problem-tackling approach in correcting ‘prison errors’ so often gets confused or distracted before it reaches any substantial grounds for envisaging a thoroughly successful outcome: the achievement of better health conditions, or more ‘meaningful’ activities, or more security devices, in spite of all their positive effects, cannot properly settle the issue as to what prison should ultimately be like.

As long as there are differences between bad prisons and prisons that are not so bad, reform programmes can be anticipated to carry on, but none of the ‘not so bad’ prisons that are found in existence are able to represent the ideal of the ‘right’ prisons or to serve as a substitute for the normative vacuum left by the abandonment of the universal vision of penal modernism. Consequently, the endeavour of improving prisons, following such a pattern, only extends its life by running through the circle of identifying problems, pursuing practicality-directed reforms and detecting new problems. While doing so, it has little hope of ending the process of crisis-permeated circulation. In terms of its normative performance, the problem-tackling strategy may be viewed as one of the forms of penal nihilism, for it in effect functions to conceal the absence of any universal normativity rather than confronting it in an authentic way.

c. Post-welfarist imaginaries of imprisonment and their normative performances

My contention is that the pursuit of practicality cannot replace the pursuit of normativity in the incarceration field. The latter should be held as indispensable to the endeavour of understanding the imprisonment complex and making any effective interventions within it. Thus, in a context where the prospects of the universal ideal of imprisonment are declining, it would be particularly misleading and counterproductive to reply on various practicality-directed programmes as the principle responses to the normative dilemmas engendered under such circumstances.

What, then, would be the proper way of addressing such dilemmas and making fruitful the pursuit of normativity in a post-universalist context? In our view, a useful point of departure for this task might be to probe into the specific imprisonment context and uncover the *extant normative resources* which it already consists of.

In this regard, the imprisonment sphere in the UK provides a particular example. As we briefly described in the earlier paragraphs, it has to face a rather fragmented penal ideological territory constituted by diverse post-welfarist patterns of discourses and practices. On the one hand, it no longer benefits from the blessings of universal normativity and the allegiances to it, but on the other, those post-welfarist approaches also provide rich resources for representing and reflecting on how the normative dimensions of imprisonment can be addressed in contemporary circumstances.

Those differential approaches to imprisonment involve their own perspectives for interpreting the current imprisonment complex and their particular definitions of its urgent needs and central reformation objectives. They tend to attract their own respective groups of audiences and they exert uneven influence in the realm of policy-making and the institutional operations of incarceration. To a great extent they are entangled with one another. For example, among academics and many professional practitioners, liberal penological values are still widely adhered to and this is reflected in a number of proposals, including the promotion of penal moderation and the revival of rehabilitation programmes in prisons (Loader, 2010; Bosworth, 2010a; Snacken, 2010; Robinson, 2008). Although, within the sphere of policy-making and institutional practice, the impact of the liberal prison reform ideal has shrunk markedly compared with the penal welfare phase, the core values of liberal penal thinking have maintained a stable place within academic journals and conferences, and this has been reflected constantly in mainstream broadsheet newspapers and government-funded prison researches and corresponding reports (including the influential Woolf report which was published in the early 1990s) (Home office, 1991a). Moreover, as we will analyse at greater length in Chapter 3,

the contemporary liberal imaginaries of imprisonment also contains reflexions on the circumstances of the declining universal normativity in the post-welfarist imprisonment field and have developed multiple strategies to reorient the liberal penological visions in order to adapt to them.

In the tabloid papers, however, the agenda discussing prison issues is deeply critical of the ‘out of touch’ official discourses about imprisonment and proposals advocating more direct community involvement in making the system more responsive to ordinary people’s moral opinion on just punishment and the need for security (Sparks, 2001a; Cheliotis, 2010; Pratt, 2000c & 2007). Those forms of imaginaries have also gained a place within the political rhetorics formulated by ‘law and order’ politicians, victims’ rights advocates and community safety campaigners.

There are, in the meantime, risk-oriented approaches to conceiving the role and exercise of carceral power. Those forms of imaginaries place at their centre the administrative efficiency of the institutions and they tend to withdraw from substantive value judgements on the ultimate end of those institutional practices. By bringing the various risk management techniques and evaluative frameworks into the incarceration field over the past few decades, they have since brought visible changes to various aspects of institutional practice as well as the ways in which imprisonment is conceived in the contemporary world (O’Malley, 2004 & 2010; Kemshall, 2003; Ward and Maruna, 2007).

Apart from these prominent approaches to comprehending prison issues, there are also various critical, non-mainstream forms of imaginaries which are represented by independent art performers, critics and film directors whose work seeks an alternative interpretation of the current incarceration and crime control phenomena.¹¹

Notably, those penal imaginaries do not simply refer to static concepts and notions, but they represent an active and dynamic sphere that keeps interacting with the actual performances in the incarceration field. In this regard, it is helpful to consult Charles

¹¹ See, for example, the recent study of Campbell (2011) on stand-up comedy shows.

Taylor's concept of the 'social imaginary' to shed light on the way in which we understand the post-welfarist penal imaginaries. For Taylor, the 'social imaginary' is not a set of 'ideas', but is what premises and enables the practices of a society by giving meanings and moral significance to them. It is implied in the ways in which people imagine their social existence, comprehending their relationships with other individuals and institutions, engendering expectations in different social settings; and it is also about the deeper normative notions and ideals which underlie these expectations (Taylor, 2002).

The post-welfarist penal imaginaries in the imprisonment field may also be viewed as a particular cluster of social imaginaries, which are reflected in the publicly generated and debated discourses about prison issues, as well as in the less explicit logics, categories and presumptions which underpin the patterns and tactics of institutional practice, political rhetoric and actual policy-making in the incarceration sphere. We will be able to give a fuller account of the dynamics of penal imaginaries in the later part of the thesis (Chapter 2: III.iii.b); what we want to emphasize here is that the status quo of this spectrum is characterised by the coexistence of rather diverse and heterogeneous approaches. This, on the one hand, evidently signifies the decline of universal normativity in the imprisonment field; yet, on the other hand, those diverse penal imaginaries also imply their own visions about the moral foundations of incarceration, and many of them have developed their own respective ways of responding to the normative challenges associated with the post-universalist predicament.

For example, the contemporary forms of liberal penal imaginaries have developed a number of strategies to defend the validity of their normative claims *without* the support of holistic penal paradigms (we will discuss four specific approaches in this respect in Chapter 3). Such development has made them different from the liberal imaginaries associated with the holistic penal projects such as the welfarist prison scheme: they can now be viewed as containing the particular reflexive element and adaptive strategies in response to the predicament of the decline of universal normativity in the imprisonment field. Similar phenomena are also observable in

other representative forms of post-welfarist imaginaries, such as the populist imaginaries and the risk-oriented imaginaries of imprisonment (as we will examine in more depth in Chapter 4 and Chapter 5), notwithstanding the fact that they may resort to quite different strategies.

This means that the post-welfarist approaches to imprisonment do not passively live with the decline of universal normativity, but instead respond to it in their own respective ways. And this is closely connected with their effort to build up their own normative perspectives on imprisonment.

In this respect, we can talk about *the normative performance* of those penal imaginaries: as no single universal penal ideal is held as the uncontroversial standard used for determining the normative issues of prisons, the existing penal imaginaries have to rely on their individual discursive potency and constructing tactics to establish the validity of their own normative claims. Their normative performance thus refers to how effectively specific penal imaginaries formulate their own particular normative visions and have them communicated to and accepted by the relevant audiences in the normative terms.

The realm of the normative performances of post-welfarist imaginaries of imprisonment is as yet an under-explored one. They are, however, far from insignificant for the endeavour of addressing the post-universalist predicament in the incarceration field. This is because they indicate that the post-welfarist incarceration field may not be viewed merely as a desolate land from which universal normativity has been exiled. Instead, it is also a land of resources, which are involved in multiple and in many respects heterogeneous patterns and logics in making sense of custodial practices and conceiving of a desirable future for them. They are also connected with the beliefs, habitus and dispositions of the prison-related actors and their audiences which have been vital to the constitution of the current imprisonment complex. For these reasons, we should take the post-welfarist imaginaries and their normative performances as providing both the significant context and rich resources for

pursuing a meaningful normative inquiry into the contemporary imprisonment field.¹²

ii. Aims and Objectives

The discussion in the previous section suggests that custodial sphere in the UK is characterised by the decline of universal normativity and that it is a fragmented territory of post-welfarist patterns of discourses and practices. Indeed, as we will show in section (II.i) of this chapter, there are actually three separate prison systems in the UK (which respectively belong to England and Wales, Scotland and Northern Ireland) and they are quite different in practices and legal frameworks, which renders it difficult to make any generalisation of their characteristics and performances. However, the argument we made about the decline of universal normativity is not meant to imply that its situations are exactly the same in all the three jurisdictions in the UK. The degree of fragmentation and diversion within the normative landscapes of imprisonment certainly differs, for example, between England and Wales where neo-liberal policies and politicisation of penal matters are most pronounced, and Scotland, where there is a strong social democratic tradition. However, even in the latter case, the imprisonment field is far from immune to the declining universal normativity or to the advent of pluralistic normative approaches.¹³ In fact, it is hardly feasible for a single jurisdiction, relying on its own resources, to manage the task of conserving the vitality of universal normativity and sheltering it from its decline. In this regard, it is important to recognise the predicament of universal normativity as a

¹² The dynamics of post-welfarist imaginaries of imprisonment also exist in other countries, particularly some of the English speaking countries. But to incorporate them into a single piece of work definitely requires a research scale much larger than this thesis. In this regard, to make the UK the specific example of our study does not only suit our research scale, but can also illustrate how such inquiries can be carried out in a given context. In this sense, this work is prerequisite to the examination of the more general post-welfarist imaginary spectrum. In the rest part of thesis, when we use the term ‘the contemporary imprisonment field’, it refers acquiescently to the context of the UK.

¹³ This is reflected in the peculiar tactics used by the administration agents of the Scottish prison service in defending their decisions and penal values against the challenge of rival claims. Those tactics are based on parochial reasons rather than universal discourses, since the former is more likely to gain credit among their audience whose composition is also diverse. We will discuss this point in more detail in Chapter 3 (III.iii).

pervasive one, despite the fact that its concrete representations are dependent on each of the specific contexts of the three jurisdictions in the UK.

This, in our view, has important implications for the task of ‘doing the normative’ both theoretically and practically in the contemporary imprisonment field.

Firstly, it constrains the chances of success of top-down moral-penological theories to determine the purposes of prisons and the grounds of their legitimacy. Without the soil of the conviction that the existence and the operation of incarceration must be in accordance with an overarching social ideal, any a priori prescriptive framework that tries to acquire orthodox status, as did the penal welfare paradigm in the post-World War II era, would turn out to be controversial in the face of multiple competitors, each of which claims a different hierarchy of values or priority of purposes. Such an attempt is also subject to the query as to how, as a unitary prescriptive paradigm, it can plausibly reflect the deeply fragmented and pluralistic reality of contemporary imprisonment and justify its own particular normative stand.

Secondly, it also puts into question the ways in which ‘facts-based’ social-penological enquiries engage in the normative debate about the purposes and desirable direction of prison reforms. Under the condition that there is a general allegiance to a universal ideal which was viably guiding and providing grounds of legitimacy for the criminal justice system, the mainstream social scientific study of prisons usually assumes a definite role, or division of labour, in supporting and enriching a given normative agenda through the interpretation of its findings. For example, in the case of welfarist penology, its empirical findings and theorisations are essentially linked to the task of uncovering and understanding the optimal conditions for the effective rehabilitation of prisoners and the promotion of social integration. Thus there is a guaranteed path of normativity for mainstream penal studies to take. In the post-universalist context, however, the empirical and theoretical queries within the imprisonment sphere face a subtler and more uncertain situation: they are increasingly subject to the requirement of interpreting the moral and political implications of their own findings and developing insights for the

choices between different substantive penological ideals in their own terms. One of the often noted tactics of those studies to carry out the task is to resort to certain internal, ‘scientifically neutral’ standards, within their own disciplines in order to buttress some particular normative claims and to disprove others which are concerned with incarceration issues. For example, efficiency tests and cost-benefit analysis, ethnographic accounts of ‘pains of imprisonment’ and risk assessments, have been undertaken respectively or jointly in a number of incarceration researches to criticise and oppose (and in rare cases support) the tightened prison management policy, punitive sentencing philosophy, and more generally the ‘prison works’ hypothesis (e.g. Wright, 1994; Liebling, 1995; Liebling and Maruna, eds, 2005; Hannah-Moffat, 2005). Yet what those approaches have achieved is not immune to controversies. Michael Tonry identifies the fallacy of the ‘disingenuous argument’ made by the American liberal penal reform advocates who, instead of ‘arguing that unduly harsh policies are unjust, and should be repealed or modified for that reason’, have much more often ‘argued that policies—which they believed to be unjust—should be changed because they are ineffective or too costly. Proposed alternatives—exemplified by most reentry initiatives—are generally supported by arguments about reduced cost or improved recidivism reduction’ (2011: 637). In his view, this does not amount to a genuinely normative response to the punitive policies which are motivated by moral beliefs, and thus is bound to fail. In fact, the criticism may be levelled in a similar way in relation to the more extensive social scientific undertakings (certainly not confined to the American cases) which try to draw certain political implications from their analysis and interpretation of the incarceration phenomena. The tactics and discourses involved, diverse as they are, try to ‘reason’ with their discontented opponents (usually advocates of punitive views) from different theoretical angles, but they seldom answer them directly and intuitively in terms of normative judgements.

In our view, this predicament has not been brought about by making the ‘wrong’ choice between tactics of argumentation, nor can it be resolved by a shift to the ‘correct’ one (e.g. an efficiency argument being replaced by a normative argument). It is, however, indicative of some of the more intrinsically weak aspects of current

social penological studies in undertaking their normative pursuits in the post-universalist imprisonment field. That they do not ‘opt’ for straightforward normative arguments is primarily due to the fact that they are *incapable* of doing so. Without a profound conviction of the universal validity of any specific penal norms or ideals, making a normative argument is hard to differentiate from the mere ‘expression’ of one’s personal moral or political preferences. In the post-universalist context, it has become inherently difficult to establish the absolute moral authority of any single strand of penal beliefs (even if they appear to be the most ‘unproblematic’ ones), this also renders it hard to reject determinately the set of moral beliefs allegedly underpinning certain unpopular and unpalatable penal policies, simply on the grounds that they are external to our own moral parameters. This explains why social penological researchers tend to adopt various ‘round-about’ tactics to mobilise their normative calculations. They embrace a compromise between the need to embark on a convincing normative foundation for incarceration and the very consequence of the post-universalist dilemma that disrupts the formation of allegiance to any overarching penal paradigms. However, ‘doing the normative’ in this fashion can be viewed as being feeble and indeterminate from the outset, and their potential for advancing a more inspiring outlook in terms of political calculation and normative imagination are also constrained by the value/fact separation which, to a greater or less degree, is the premise of most of the current mainstream social scientific undertakings. In conditions where the dimension of values is taken as being discrete from the factual realm, the endeavour to generate meaningful normative understandings through investigating, interpreting and theorising the incarceration phenomena could hardly justify the validity of its findings within the sphere of ‘values’. This, in turn, undermines the chances of success of social penological approaches in offering normative answers to the post-universalist incarceration problems.

We shall further extend our discussion of this topic in the next chapter, which discusses methodological issues (Chapter 2: II.i & II.ii). But hopefully the above paragraphs have already prepared the ground for tentatively establishing the point that the extant normative penological approaches are considered by us to be

unsatisfying for addressing the post-universalist predicament and for examining pertinently and fruitfully the normative dimensions of the current imprisonment complex. Their weakness in this respect is itself a reflection of the post-universalist dilemma.

The crucial task which concerns us is then to explore feasible means of ‘doing the normative’ in the imprisonment field with sufficient awareness of the predicament of universal normativity and the challenges caused by it. On the one hand, it must be able to demonstrate that there are possibilities beyond the practicality-absorbed approach for understanding and bringing changes to the prison related issues. On the other, it should offer an alternative methodological perspective to that of the top-down ‘normativist’ argument and that of the ‘bystander’ style of social penological observation and analysis. To achieve this it needs to find ways of bridging the factual and the normative within its inquiries and to make meaningful use of the extant normative sources which are viable within the current imprisonment field and to base its approach on them instead of any presumed universal penal ideology.

Our thesis proposes *an* approach to meeting these challenges by undertaking a social hermeneutic examination of the dynamics of post-welfarist imaginaries of imprisonment. Let us proceed with some further explanation below.

Firstly, as we showed in the foregoing paragraphs, the diverse forms of contemporary penal imaginaries and their normative performances can be taken as important resources for the endeavour of addressing the post-universalist predicament and of meeting the challenges related to it. This is why we consider them as the meaningful starting point for our research project. But when it comes to the question of how to make effective use of them to suit our research purpose, we will need to adopt a particular methodological framework.

Because our purpose is to revitalise the normative pursuit in a context deprived of universal normativity, we cannot take the normative assumptions of each of those imaginary forms as self-evident and unproblematic or accept their interior logic in a

non-reflexive way. Each of the strands of these penal imaginaries may demonstrate to us a particular normative approach to imprisonment, and we may manage to figure out whether a specific ideal or operational mode of imprisonment is in accordance with it or not, but essentially this would only confirm its own normative understandings and presumptions, whose validity is at once questionable outside its own conceptual boundaries. And we can hardly tell why any one particular approach is inherently superior to another.

For the same reason, we would not be able to fulfil this task by confining our studies to the external linkages of those imaginaries. It is certainly a meaningful endeavour to investigate how the contours of current forms of imaginaries of imprisonment were constituted and what particular socio-political factors functioned to shape them. But this kind of work would not automatically convince us which type of approach should be considered as a sound one in the normative sense, or what would be an acceptable alternative. Moreover, it is far from feasible to adopt any external criteria to decide the matter, since the field per se is characterised by plurality and by the absence of universal normativity.

Since neither the internal nor the external standards of imprisonment imaginaries can be accepted as the premises of our enquiry, we need an alternative approach for pursuing it. We propose a social hermeneutic approach for examining the imaginaries of imprisonment with a focus on their *normative performances*. The methodological framework that we use has been developed from a re-interpretation of Emile Durkheim's methodological insight in promoting his idea of 'moral science'. And the distinctive character of our method is that it adopts a more integral perspective for treating the relationship between the factual and the normative in its probing into the dynamics of penal imaginaries. And this enables the inquiry to be simultaneously an undertaking that is targeting at and capable of revitalising and enriching the normative performances in the imprisonment field.

We are going to discuss in detail in the next chapter how we will establish our methodological framework and what its concrete working rationales consist of. Yet,

at present, a brief explanation of it will be helpful for the purpose of making clear our research objectives.

The methodological approach is based on the concept of ‘introspective normativity’, which gives analytic and evaluative guidance to the social hermeneutic examination of various strands of the imaginaries of imprisonment. ‘Introspective normativity’ in our thesis refers to the particular performances of penal imaginaries to symbolise the post-universalist penal realities and to construct their distinctive normative visions of imprisonment. It concerns how, *without* the backing of any conventional penal ideological beliefs and in some cases in the *absence* of any essential allegiance to such belief systems’ desirability, the validity of different normative claims gets established in the forms of their respective penal imaginaries. Thus, in our thesis, ‘introspective normativity’ assumes a markedly post-universalist attribute and it gives us a theoretical perspective to uncover the normative performances of penal imaginaries in post-universalist conditions. Our hermeneutic examination of the performance of introspective normativity is then envisaged to shed light on whether and to what extent a particular type of imprisonment imaginary can manage to assume the normative role which traditional universalist penal ideologies used to play. By exposing that, it helps us to detect the innovative as well as the counterproductive tendencies within the normative performances of those imaginaries, and accordingly it helps us to push forward the normative endeavour in the imprisonment field in a healthier and more fruitful direction.

In order to specify the concrete forms of the performance of introspective normativity, we resort to a number of ideal types in the thesis. These ideal types include *detachment*, *oblivion*, *confrontation* and *transformation*. Each of them represents a distinctive pattern of introspective normativity in which the innovative or nihilistic tendencies of normative performance get realised in penal imaginaries. They are used to indicate how, in their respective ideal cases, the penal imaginaries either vibrantly reinvent and revitalise their normative pursuits, or instead place nihilistic closure on them in the post-universalist conditions. For example, the *detachment* model is related to the peculiar disposition of the penal imaginary to

accept the fading of any universal ideal as a fait accompli and to renounce any attempt to restore it. We will find that this pattern underlies some contemporary forms of liberal imaginaries of imprisonment.¹⁴ By revealing and highlighting those patterns in relation to the concrete dynamics of penal imaginaries, we can capture the idiosyncratic quality of the normative performances in those imaginaries, as well as acquiring evaluative grounds for assessing them. Together the ideal types of introspective normativity work as theoretical coordinates for directing the analyses and evaluation of the specific forms of imaginaries of imprisonment and providing simultaneously analytical and normative guidance for the examination based on them. We will give detailed explanations of each of the ideal types in Chapter 2 (III.iii.d), and we will show how they can be applied to the examination of specific penal imaginary cases in the three chapters that follow.

This method enables us to determine whether certain forms of penal imaginaries contain innovative potential which can be developed for the purpose of meeting the post-universalist challenges, or whether instead they are obfuscated by nihilistic tendencies in treating the normative facets of incarceration. Accordingly, this study can help us to decide how to deal with the different approaches of penal imaginaries respectively in the face of the post-universalist predicament in the contemporary imprisonment field: whether to affirmatively accept it and develop its insights, or whether to critically argue against it and seek its transformation. This merit of the method renders it a suitable one for our research in pursuit of the goal of promoting a fruitful normative enterprise in the post-universalist imprisonment field.

Now we are in a position to summarise the research purpose and the objectives of our thesis.

In general, it has the aim of uncovering the normative aspect of the post-welfarist imaginaries of imprisonment in the UK and it is seeking to revitalise their normative performances.

¹⁴ See Chapter 3 (III.ii).

The weight of this inquiry consists in the idea of illustrating the application of a particular methodological approach in the context of ‘doing the normative’ in the post-universalist imprisonment field, and not in the construction of an *exhaustive* account of the normative performance of every type of imaginaries of imprisonment. As we will make clear in the next chapter, the methodological perspective based on the concept of introspective normativity is inherently an open-ended one, and its undertakings are non-static and on-going in relation to the ever-renewing dynamics of the penal imaginary. In this respect they do not envisage a research outcome that would achieve closure in relation to the examination of penal imaginaries, but one that may inspire further reflexion on them and embrace their innovative potentiality (in Chapter 6 we will find a proper place to test this point).

As we showed earlier, the case of the UK forms a typical example of imprisonment in the post-universalist context. The resources of the penal imaginaries that we draw upon are mostly parochial, which means that the research findings are case-specific. Yet the decline of universal normativity in the imprisonment field is far from being a unique phenomenon in contemporary societies. In this respect, the methodological approach of the thesis can also be applied to improving our understanding of other prison systems which face similar situations (for example, those in North America, Australia and New Zealand).

Specifically, the thesis has three objectives to fulfil. It aims to:

1. Develop a pertinent methodological framework for analysing and evaluating the normative performances of post-welfarist imaginaries of imprisonment.
2. Identify the representative forms of imaginaries of imprisonment in the UK and examine their normative performances respectively.
3. On the basis of the fulfilment of the above two objectives, to give an overall assessment of the imprisonment imaginary spectrum within the UK and to shed light on the possibilities of re-normalising its performance.

iii. Structure of the Thesis

The thesis is composed of six chapters. In the remaining part of Chapter 1, we will provide an overview of the current circumstances of imprisonment in the UK. It seeks to identify the key problems and challenges within the field in the light of its institutional structure and organisations, the profiles of its inmates, the definition of its aims and objectives, its intra-order maintenance and its political environment. This section serves to provide a rudimentary background of empirical knowledge for the main body of research in the thesis.

In Chapter 2 we elaborate the methodological framework of the research. This starts with an overview of two representative approaches to normative penological understanding: the normativist approach and the sociology of punishment, and it explains why they both have important shortcomings which render them inadequate for the purpose of our research. Then we turn to the methodological thoughts of Durkheim's work, which we consider contains rich and significant resources for rethinking and re-evaluating a number of key presumptions related to the tensions and challenges faced by the current methodological perspectives in advancing normative penological understanding. These presumptions include those about the relationship between the normative and the factual, between theory and practice, between scientific inquiry and moral construction. Through the interpretation and critical analysis of Durkheim's methodological perspectives implied in his construction of the peculiar moral secularisation project, we will identify some of his insights which are particularly relevant and inspirational for our own research, and we also will investigate how such insights – which we will recognise and reconstruct as a unique social-historical hermeneutic approach – might benefit the methodological thinking in the context of contemporary imprisonment field. Based on that work, we will develop our own analytic-evaluative method (one underpinned by the concept of introspective normativity) of dealing with imaginaries of imprisonment and examining their normative performances.

The chapter also explains why we use penal imaginaries as the main materials to be examined and how we select the relevant sources in our specific studies. Finally, it specifies four ideal patterns of the performance of introspective normativity, namely detachment, oblivion, confrontation and transformation, so that they can jointly provide concrete guidance for each of the specific studies in the following chapters.

In Chapter 3 we identify three representative forms of imaginaries of imprisonment in the UK at the present time. They include the liberal, the populist and the risk-oriented imaginaries of imprisonment. The main part of this chapter deals with the case of liberal imaginaries. It discusses four distinct types of normative construction in the contemporary liberal imaginaries of imprisonment: namely the exterior validity approach, the ‘limits’ acknowledgement approach, the cultural identity approach and the penal consumption approach, and it examines how they respectively display the nihilistic or innovative patterns of the performance of introspective normativity, including the patterns of detachment and oblivion.

Chapter 4 examines the normative performance of populist imaginaries of imprisonment. Firstly, it offers an overview of the usual ways in which prisons and prisoners are imagined in the mass media and by the public in the UK. Secondly, in order to facilitate a more comprehensive understanding of them, it discusses how these phenomena are explicated in the current sociological literatures (particularly those analysing the phenomena of ‘moral panics’). On this basis, we will conduct an examination of introspective normativity and uncover some of the inherent limits in populist imaginaries which make them a ‘handicapped’ normative pursuit. The chapter also identifies some innovative potential within this approach.

Chapter 5 examines the normative performance of risk-oriented imaginaries of imprisonment. Firstly, it gives a brief discussion of the dominion of risk logic in contemporary societies and provides an overview of various risk management techniques and perspectives within the imprisonment field. Then it carries out the introspective normativity analyses and identifies three particular strategies of normative construction in risk-oriented approaches, including the subordination of a

holistic normative perspective, risk serving as an ideological shelter, and the creation of an isolated normative reality. The chapter concludes that those strategies function to impose closure on the normative performance of imaginaries of imprisonment and that they are at odds with the needs for normative innovation within this spectrum. In the meantime, it also acknowledges the potentials of normative innovation within certain specific risk-constructing approaches employed in the imprisonment field.

In the final chapter, we will undertake the task of giving a general assessment of the normative performance of the spectrum of the imaginaries of imprisonment in the UK and shedding light on the ways of re-normalising it. Based on the summarising of the findings in the preceding chapters, we will diagnose the general performance of the mainstream imaginaries of imprisonment in the UK as ways of ‘escaping from being normative’ and link them respectively to the nihilistic patterns of introspective normativity. Then we will analyse the social conditions which are connected with such tendencies and with problems in the normative sphere. The structuralised segregation of disadvantaged groups of people is identified as a crucial factor in this regard. The latter part of this chapter focuses on demonstrating the possibilities of re-normalising the imaginaries of imprisonment in the context of the UK. It starts with a discussion of the innovative potentials of the three representative forms of penal imaginaries respectively. Then it introduces the cosmopolitan approach as a response to the predicament of the decline of universal normativity in the imprisonment field. The major part of it tries to outline a cosmopolitan perspective that is enriched by viable performance of introspective normativity and to specify its implications for imaginaries of imprisonment in a number of areas.

II. Imprisonment and Its Challenges: An Overview of the British Case

This section aims to provide a descriptive account of the key issues in the field of imprisonment in the UK.¹⁵ It is obvious that to grasp the whole dynamics of the

¹⁵ As the limited volume of the chapter does not allow comprehensive discussion of each of the three major prison systems in the UK, we opt for a collective approach in doing the overview. As the following paragraphs will make clear, the circumstances of England and Wales have the greatest

discipline in all its details is beyond the range of the thesis. Our purpose is thus to describe several critical aspects of the actual circumstances of imprisonment in this country, which have attracted much attention in both the academic and the political spheres. Whereas great efforts will be made to offer readers a concrete appreciation of the multiple facets of British prisons, it is also anticipated that this descriptive element of the study, which at the present phase of our exploration will be unavoidably gross in character, will also be open to progress and to new findings in the area, which is dynamic in nature and subject to ongoing changes.

To start with, we will provide an overview of the practices of prisons in the UK by examining several key aspects of their performance. Following the overview we will proceed to identify the principle challenges for the practitioners and policy-makers in the field of imprisonment. This part of the work is basically descriptive: it aims to provide the empirical background knowledge that is necessary and is a prerequisite for further exploration of the normative dimension of the pluralistic penal imaginaries which have emerged as responses to and/or as shaping forces of the imprisonment complex in the UK.

i. Structures and Organisations

The contemporary prison service in the UK consists of three different systems. The largest one is that of England and Wales; apart from that, both Scotland and Northern Ireland have their own respective prison systems which are part of different historical and legal traditions. The focus of this study is on the former two; yet by design it is not confined to documentation of every aspect of imprisonment within a specific temporal-spatial framework, but instead it aims to provide a background in a way that is a prerequisite for understanding the challenges of a broader sociological origin and the corresponding approaches in responding to them, which together provide the basis for the following investigations of our research.

weight in our discussion, whereas we will specify the situations in Scotland and Northern Ireland where they are particularly relevant.

In the UK, the systemic practice of depriving offenders of their freedom in a custodial institution as a punishment per se for the violation of serious legal rules started only a little more than two hundred years ago, when the independence of the Northern American colonies forced the British government to seek alternative ways of disposing of felons, who used to be transported to those colonies to serve their sentences. As a result, confinement served as the solution to this crisis. From the use of hulks in the initial phase, through the building of the national penitentiary at Millbank, the design of a 'model prison' at Pentonville, the setting-up of the youth reforming institution called the Borstal, to the open-condition experiment and the hostel scheme, the physical means of imprisonment have undergone considerable change in Great Britain (Soothill, 2007: 32-33). This process also involved the establishment of the administrative organisations of the prison service, as well as legal frameworks that stipulated the pertinent conditions for applying confinement and operational rules in running the institutions. In the middle of the 19th century, the prisons in England and Wales were turned into a national system and were removed from the previous control of local hands such as magistrates (McConville, 1981) by the introduction of the Prison Act 1877, and they were put under the responsibility of a central management body (which was the Prison Commission at that time; and similar changes also happened within the Scottish system as well, with the establishment of a Prison Commission for Scotland in the same year). The particular forms and structures of central government control of prisons have changed a lot since then, and in general although prisons are located regionally, the definition of their operational targets and principles and the assessment and monitoring of their performance are put under the control of a central department: currently the Home Office sets up the position of Director General of the prison service to take charge of the overall operation of prisons in England and Wales, and it appoints a number of area managers to work in their respective headquarters to make sure that each prison carries out its performance in accordance with the edicts of the centre (Coyle, 2005: 54). Apart from the leading role of the central government, British prisons are subject to monitoring and inspection, a practice which dates back to the early 19th century and which is one of the major powers that have prompted major reform movements

in the history of the institution.¹⁶ Before 1981, the monitoring of prisons was incorporated into the prison system, but since then it has become the task of an independent inspectorate which was under the leadership of HM Chief Inspector of Prisons for England and Wales. A similar body has also been established in Scotland. The prison inspectorate is granted the right to visit all parts of prisons at any time, independently monitoring the conditions of prisons and reporting to the central government directly.

The latest development regarding the administrative structure of prisons in the UK is the setting up of the National Offender Management Service (NOMS) in 2004, which aims to integrate the prison and the probation services on a basis that addresses the need for managing offenders and reducing re-offending more coherently and more effectively.

Another important facet of the British prison system is related to the trend of the privatisation of public services which became the leading policy of the government when the Thatcher administration held power in the 1980s. Like the other public sectors, the prison service in the UK, despite great controversies, also became a service to be contracted to private companies. In some cases, the private corporations not only engage in the provision of material and security support for prisons, but also take on the core task of prison management, which means, in spite of the allegedly non-transferable overall control and responsibility of the central government, that it is some particular private sector that enforces the custodial status of the prison inmates and runs the institutions with a view to making profits.

ii. Inmates

Within the structural framework of British prisons outlined above, how is the concrete operation of custodial policy taking place? We need in the first place to

¹⁶ In 1835, the government appointed prison inspectors to examine the condition of prisons throughout the UK and it turned out that their critical report on the details of the prison service played an important role in the subsequent centralisation of the prison system in 1878 when the Prison Act 1877 came into force.

come to an understanding of those who are kept confined there, where they come from and what are the principle causes of the receiving of an imprisonment sentence. After all, the circumstances and social backgrounds of the inmates of the prisons constitute the starting point for consideration of both the concrete problems and the challenges of the contemporary regime and the meaningful exploration of practical and normative solutions.

According to the report of Prison Reform Trust, published in December 2010, the total prison population in the UK reached 85,393 in England and Wales (19 November 2010), and 7,680 in Scotland (5 November 2010) (Prison Reform Trust, 2010). According to the data, England and Wales had the highest imprisonment rate among all the western European countries, which was 154 per 100,000 of the population. In comparison, France, with a similar size of population, had a total prison population of 59,655 and the imprisonment rate was 96 per 100,000 at the time when these statistics were compiled in 2010.

Notably the large scale and the high rates of imprisonment in the UK are the result of a rapid increase in the prison population over the past few decades. Compared with the present figure, the average prison population in England and Wales in 1992-93 was 44,628. This means that, in a period of less than two decades, the number of those imprisoned nearly doubled in England and Wales. If we estimate the increase of the prison population between 1995 and 2009, the outcome is also outstanding: the figure grew by 32,500 or by 66% (Prison Reform Trust, 2010). This growth was directly related to the change in custodial rates and length of sentences (Millie et al., 2003). Details of the prominent expansion in the prison population have been well documented in government reports and the researches conducted by activist groups, institutes and academics, but their multiple implications for the operation of the prison regime, the grounds of its legitimacy and its broader social, political and fiscal impact are still to be fully examined.

Among the growing body of inmates in England and Wales, most are male prisoners, and women prisoners represent 5% of the total prison population. The number of

women prisoners was 4,265 on 19 November 2010, which was comparatively small compared to the number of male prisoners, but in the last decade, the population of women prisoners has gone up by 33%, which is even higher than the 28% growth for men. For female prisoners there are nine women's prisons in England (none in Wales). In Scotland, according to the 2008 report of the Scottish Prisons Commission, the 2006/07 female prison population was 353, which, compared with the average daily female prison population in 1997/98, increased by 90%.¹⁷ It can be noted that the growing population of female prisoners has become an increasingly significant issue for the British prison systems whose design rationales are mainly male-oriented. The statistics also show that the majority of women prisoners were convicted of non-violent crimes (63% compared to 45% of men).

Another noteworthy feature of the inmates' composition is the high representation of ethnic minority and foreign prisoners. At the end of 2010, there were 11,062 foreign citizens (non-UK passport holders) kept in prison in the UK, constituting 13% of the overall prison population. Between the years 1999 and 2009, the total number of foreign nationals in UK prisons increased by 111%, compared to a 21% increase in British nationals. Inmates from minority ethnic groups also have a noticeable representation among the imprisoned population: in 2009, there were 22,292 prisoners from minority ethnic groups, who accounted for nearly 27% of the overall prison population. This number is much higher than the 1 to 11 rates among the general population. Specifically, overall black people account for the largest number of minority ethnic prisoners (54%), and their number increased by 51% between 1999 and 2002, when the total prison population grew by just over 12%. The disproportionality of the number of black people in prisons in the UK has even overtaken that in the US.¹⁸ In many cases, there is an overlap between these two identities: for example, the statistics show that at the end of June 2009, 33% of minority ethnic prisoners were also foreign nationals. Given the often more severe situation of the foreign and minority ethnic prisoners (e.g. their lack of language skills, their difficulty in getting community support and legal assistance), their notably disproportional representation within UK prisons consistently raises a

¹⁷ See the report of the Scottish Prisons Commission (2008).

¹⁸ See the overview of foreign and minority ethnic prisoners in Prison Reform Trust (2010).

crucial question as to their legitimacy basis, especially in terms of the concern about discrimination.

If we investigate further those kept behind bars, we must not neglect some notable characteristics regarding their social backgrounds. The statistics of prisoners have displayed some common features among a good proportion of inmates. One is their status of employment. The Social Exclusion Unit report 'Reducing re-offending by ex-prisoners', carried out in 2002, showed that an average 65% of prisoners were unemployed before imprisonment, while the average unemployment rate in the general population was just 5%. Moreover, 52% of male prisoners and 71% of female prisoners held no qualifications; 49% of male prisoners and 33% of female prisoners had been excluded from schools. In each case the percentage is much higher than the average of the general population. Notably there are also a large proportion of homeless people in prisons (32%). These figures suggest that the inmates of the prisons in the UK largely come from those socially disadvantaged groups: those who are under-educated, unemployed and homeless. It is also known to criminologists that these groups are also the primary victims of violent crime. Thus it is hardly surprising that the operation of prisons in the UK context is crucially connected with the structural problems that account for the reproduction of social marginality and it is in need of being addressed within the broader context of social justice rather than a formalistic application of penal codes and sanctions. And as we will analyse in Chapter 6, this also has significant implications for the normative performances of current mainstream imaginaries of imprisonment in the UK.

Apart from the features of the composition of inmates discussed above, there are still a number of issues that are important for the understanding of people who are kept in prison, such as the particular representation of aging people, children and young offenders, those with drug addictions and other mental and physical disorders. For the purpose of providing a background understanding of the particular practices of imprisonment in the UK, those issues are omitted here so as to restrict the scale of the examination; yet more details will be brought into discussion in the later chapters, where it is necessary to do so.

iii. Aims and Objectives

With such a large body of inmates contained within prison walls, how to define the aims of these institutional practices is vital to those who are subject to the performance of the regime, as well as the purposeful fulfilment of public interests. The prison systems in the UK have gone through a painstaking process in developing a justifiable and workable set of aims for their operation over their two hundred-year history as an outstanding device for the exercise of modern punishment. The general framework for orienting the aims of incarceration consists of several elements which have been more or less stably established; they include the objectives of punishing persons for the crimes they have committed; deterring potential law-breaking behaviours by the severe consequence implied in the sanction of imprisonment; reforming prisoners in a way such that they can return to society and lead a law-abiding and meaningful life; and protecting the public by putting dangerous offenders in confinement. The HM prison services take the responsibility for publishing a statement of their vision and the objectives of the incarceration institutions in England and Wales, which normally consists of an affirmation of some of the primary elements within the general framework of penal aims. For example, the current HM Prison Service Statement of Purpose identifies the following purpose:

Our Vision

- * To provide the very best prison services so that we are the provider of choice
- * To work towards this vision by securing the following key objectives.

Objectives

To protect the public and provide what commissioners want to purchase by:

- * Holding prisoners securely
- * Reducing the risk of prisoners re-offending

* Providing safe and well-ordered establishments in which we treat prisoners humanely, decently and lawfully.¹⁹

Neither the particular statement nor the general framework of the objectives of imprisonment contains anything essentially novel, but this does not mean that the sphere of such institutional aims has reached a desirable state of maturity and has been uncontroversially established. If we examine the actual field and the history of such practices, it may be found that confusion and uncertainty is in fact an intrinsic aspect of the pursuit of figuring out the aims and objectives of prisons in the UK.

In the 19th century the most pervasive ideology guiding the practice of imprisonment in the UK was the infamous ‘less eligibility’ principle which, based on utilitarian logic, presumes that the best means of achieving the deterrent effect on offenders is to make sure that the pain of serving the prison term outweighs the pleasure derived from the crime. Under this doctrine, the best prison conditions should not rise above the worst material conditions in society as a whole. It also implied that during times of hardship (e.g. wars, economic recessions) the deterioration of the prisons environment is justified in terms of its comparative status in relation to the surrounding society. This principle was later abandoned because of its apparent incompatibility with the fulfilment of other goals like rehabilitation and the humanitarian treatment of prisoners. However, the particular logic that effective deterrence is tied up with unpleasant prison conditions is endemic in the later stages of prison reform and objectives-orientation, and it continues to have an influence on the public imagination of prisons even up to the present time.²⁰

The exposure of serious prison brutality and scandals, which were reflected in the report of Gladstone Committee of 1895, marked the abandonment of the ‘less eligibility’ doctrine and this led to its replacement by another influential ideology

¹⁹ See the website of HM Prison Service: <http://www.justice.gov.uk/about/hmps> (visited 20/12/ 2012).

²⁰ In the view of some authors, the ‘less eligibility’ principle has even been revived in the latest form of performance within the realm of policy-making for imprisonment, in the revival of tough approaches which argue in favour of ‘decent and austere’ prisons together with the invention of the slogan ‘prison works’. See the discussion of Scott (2007: 62-63).

that dominated the practices of prisons in the UK for a large part of the 20th century: this placed the task of rehabilitating and reforming prisoners at the heart of the institutional goals of prisons. Under the rehabilitative regime, the role of training, education and work was central to the acknowledged task of rehabilitating prisoners with a view to their return to society with the ability to live a useful life. As in many other western European countries and the US, the correctional scheme maintained its dominant status for quite a long period during the 20th century. However, from the 1960s, the prisons in England and Wales experienced a lasting phase of crisis characterised by high-profile prisoner escapes, deterioration of prison conditions and a widely-perceived failure in reaching the rehabilitation and crime-prevention goals. Consequently the correctional aim lost its dominance and was replaced by a scheme of objectives that has a more fragmentary and capricious character. In the 1970s it became increasingly difficult to adhere to the ideal that prisons could be places where radical transformation of offenders could take place. Instead, reformist proposals such as ‘humane containment’ (Home Office, 1969) and ‘positive custodial’ treatment (Home Office, 1979) have tended to take a more realistic approach, which no longer embraced the positive aim of reform and rehabilitation but focused on negative ones such as avoiding brutality and restricting the harms caused by confinement. The aims of imprisonment thus became more inward-looking: what is controllable and worth promoting is to ensure that life in prisons does not fail the basic criteria of normal social life and is thus made less difficult to bear. Such an objective-defining approach also reflected the rising influence of managerialism, a governance rationality that prioritises the process over substantial results and in the case of incarceration tends to apply a commercial-style perspective to address the roles of the government (as the purchaser rather than the provider of the service) and prisoners (consumers in this case, even though they cannot choose not to consume).

The later published Woolf Report (Home Office, 1991a), which is thought to represent the most progressive liberal penal agenda, raised the key themes of ‘security, control and justice’ and demonstrated an effort to bring meaningful values and positive ends into the realistic practices of the regime which were then suffering from intense practical dysfunctional problems (manifested by a number of prisoner

riots) and an overall legitimacy crisis. Despite the fact it was well accepted by penal liberals as well as the government on its publication, the critics held that the reformist scheme still failed to address the broader social structure and power relations that accounted for the unequal consequences of the imprisonment practices for different social groups and that, as a result, the liberal definition of aims for prison reform also played a role in securing the hegemony of the structural injustices underpinning the operation of the prison system (Sim, 1994). The Woolf agenda marked a changing period for the prison service, but it was not a lasting change. The Whitemoor escape event in 1994 gave the Conservative Home Secretary Michael Howard the impetus to turn to a more punitive and security-prioritised approach in determining the operational framework of prisons. And the Woodlock report (1994), following the event, also demonstrated that the execution of the liberal agenda did not prevent huge insecurity and disorder problems occurring in prisons. Subsequently, the Woolf themes of ‘security, control and justice’ were replaced by the lexicon ‘custodial care and control’, which instead placed the issue of security at the centre of prison service objectives (Home Office, 1995: para 3.39). This new balance between security, control and positive ends for prisoners seemed to return to the early patterns and practices and became the object of heavy criticism. However, after the new Labour government took power, more constructive elements were incorporated in the selective rebuilding of the framework of prison objectives, particularly in the light of the restatement of the rehabilitative end (see the framework of aims and objectives of HM Prison Service in 1998).

This process of defining prison purposes is certainly still ongoing, and the present strategic framework of aims and objectives of HM Prison Service may be subject to some further changes, particularly when there is an increasingly prominent political stake in the sphere. This historical overview reveals that the seemingly stable framework of prison objectives and the routine language describing them do not necessarily suggest that it is just a static and settled sphere within penal practices. Instead, we can note the existence of a process of struggle between quite contradictory purposes and rationales, which is never immune from uncertainties and profound puzzles. For some authors (Scott, 1997), the enterprise of striving for an

acceptable set of operational goals for prisons in the UK is like riding on a ‘penal merry-go-round’, and there is ‘the clear inability to find a coherent and sustainable set of principles to guide what prisons are for. The numerous, and often contradictory aims of imprisonment seem to be constantly reinvented when previous aims have exhausted plausibility’ (Scott, 2007: 68).

However, it is still important to note the peculiar features and difficulties regarding the orientation of prison purposes in the post-1970s context in the UK. Even if it may be anticipated that the objectives of reform and rehabilitation will gain a certain degree of revival in prisons in England and Wales or get even strengthened in prisons in Scotland, where adherence to the correctional ideal has been more consistent than in their English counterparts (McAra, 2006 & 2008 and Robinson, 2008), it no longer represents the ambition of pursuing any ideal of *overall societal reform*. By contrast, the rehabilitative aim in the present prison reform context mainly addresses institutional issues with a view to improving the experiences of inmates within prisons and the external social benefits related to this. In this regard, the liberal agenda prioritising the normalisation of the inmate’s life and the conservative agenda highlighting security issues stay in similar positions. In contrast, the initiation of the ‘reforming and rehabilitation’ movement in the late 19th century was in a close relationship with the trend of optimistic positivism and contained the key element of modern universalism. Within the vision of universal normativity, the orientation of the prison reform agenda was in its nature outwardly referential and was less susceptible to the problems regarding the uncertainty and circularity surrounding the definition of the purposes of imprisonment.

This does not imply that the restoration of a universalist normative scheme is feasible within the imprisonment field today or that it should serve as the only solution to the contemporary puzzles regarding the aims of incarceration. Rather, it serves to remind us that this sphere of the purposes of prisons needs to be examined in a way which is fully aware of the implications of the decline of universal normativity and which raises pertinent standards that can be used to assess its various self-proclaimed successors.

iv. Surroundings and Maintenance of Order

The establishment of prison administrative systems and their operational objectives provides a framework for the incarceration practices, but they are by no means equal to the concrete happenings within the specific sites of the institutions. The physical existence of prison buildings, their interior surroundings, conditions of food, health care, exercise and facilities, the routine activities of inmates and staff, above all the everyday experiences which take place behind prison walls, constitute the very sphere of front-line practices of incarceration, which usually reflect the most distinctive features of the institution. Yet this is also a realm which has been largely concealed from the public gaze. Thanks to the fruitful work and writings of the prison researchers in the UK, we can now base our discussion upon a rich body of detailed knowledge about the actual conditions and life in prisons.²¹

First of all, the physical device of imprisonment matters - the design of the architecture of prison buildings does not only reflect the purpose of imprisonment, but also shapes the way in which the effect of imprisonment is achieved. An overview of the history of English prison architecture (Jewkes and Johnston, 2007) shows that there is a close connection between the structural character of prison buildings and the function they fulfil in exercising confinement: the buildings of prisons like Millbank, Shrewsbury, Pentonville, Wormwood Scrubs and Liverpool are all attuned to the major penal ethos of their times.²² It is important to note that many of these ancient prisons are still being used by the current English prison service. This has created a marked tension between contemporary ends and past means – a good number of those 18th and 19th prisons incorporate into their architecture a tremendously repressive and punitive goal, which is quite incompatible

²¹ There is a large range of studies which investigate prison conditions and what is going on inside prisons, including Liebling (1995 & 2004), Lippke (2003), Edgar et al. (2003), Reuss (1999), Vagg and Smartt (1999), Bosworth (1996), etc.

²² In the 18th century, the purposely designed prison architecture was an attempt to meet the need for 'reform' and a reduction of the likelihood of the fatal contagion of 'gaol fever'; in the mid-19th century the repressive end became dominant and, over a large part of the 20th century, prisons were built to suit the rehabilitative purpose. See Jewkes and Johnston (2007).

with the objectives of the current regime. For example, Pentonville, the ‘model’ prison which was opened in 1842, and which was designed under the influence of some of the mainstream penal imaginaries in the Victorian age, combines a grim and austere image with a panopticon-like internal structure that facilitates the supervision of prisoners and the enforcement of the ‘separate system’, which was well received at that time, and which aimed to promote moral reformation by restricting the chances of communication between the prisoners (Jewkes and Johnston, 2007: 185). Such a design also sent a clear message to those outside the prison walls that the building was totally for the austere purpose of punishment and repression. Many of those past prisons still hold hundreds of thousands of prisoners – even though the government has carried out programmes of renovation and refurbishment to make them suitable for new functions, many of them cannot reach the same level as the more recently built prisons.

Entering into the 21st century, the British prison systems do make some attempts to embrace some more advanced ideas about prison design, which is reflected in the opening of new-generation prisons like Peterborough in Cambridgeshire. These new prison designs have manifested some distinctive ideals differing from the conventional prisons through their more considerate use of natural light, their creative arrangement of space and by taking more care for the psychological effects on the inmates and those who work within them. In the case of Peterborough, it has been designed to resemble a shopping centre rather than a jail.²³ However, the new-generation prisons only form a very limited part of the whole prison regime in the UK. For most of the conventional prisons, the architectural designs are far from adequate to address the multiple needs of those living there and they also usually reflect the influence of the incorrigible ‘less eligibility’ assumption in their choice of a bleak and function-based aesthetics. Furthermore, with the growth of the prison population, it is likely that the main priority for the future physical development of prisons will be placed on their accommodation capacity rather than their quality and innovation. This means that the concerns over the positive use of the prison space and architecture will have to wait for the longer term for a better outcome.

²³ Details can be found in Jewkes and Johnston (2006).

Apart from the physical design of prisons, the internal surroundings, the arrangement of activities and the maintenance of order may have a more direct impact on the life of prisoners and staff and they also constitute a significant aspect of prison performance. One key indicator of the quality of prison performance in this respect is whether the prison can provide enough accommodation and sufficient facilities for the inmates. The HM Prison Service has defined it as the uncrowded capacity, which represents 'the good, decent standard of accommodation that service aspires to provide all prisoners' (see, Prison Service Order 1900, Certified Prisoner Accommodation). According to the measurement of NOMS, at the end of April 2010, 80 of the 137 prisons in England and Wales were overcrowded. An investigation made in 2009 showed that an average of 20,452 prisoners were either doubled up in cells designed for only one, or three of them were held in cells designed for two, in the year 2008-09 – this number accounts for 24.7% of the total prison population (Hansard HC, 19 June 2009, c541W, quoted in Prison Reform Trust, 2010). The problem of overcrowding is also often associated with a number of other detrimental facets of prison life, such as psychological pathologies and mental disorders. In 2008, it was recorded that 2,195 in-cell assaults happened, committed by prisoners on other prisoners (NOMS, Safer Custodial News, July/August 2009). It is obvious that the overcrowded prison surroundings and the problem regarding the quality of custodial operations are due largely to the marked increase in the prison population. Pressures on their accommodation capacity, the shrinking of private space and subsequent management challenges are also linked with another important sphere of prison performance – the maintenance of security and order inside prisons. Since the inmates do not live in prisons out of their own free will, there is an unavoidable tension between the smooth running of the custodial routines and the disposition of some (if not all) prisoners to pursue their own interests in a way that is at odds with the limitations of prison surroundings, let alone the fact that there is always a proportion of highly uncooperative inmates in each prison, who represent a constant threat to the maintenance of daily order inside the institution. The extreme forms of the breakdown of order, i.e. prisoner riots and escapes, have happened in the UK only rarely since the 20th century. However, when they did occur, they usually

manifested the fact that there had already been enormous problems with the system of prison management. It is thus not surprising that high-profile prison riots like that at Strangeways in 1990 and prisoner escape events often lead to an overall review of the prison service and the subsequent re-orientation of the systemic practices (Carrabine, 2004).

Like the other aspects of prison performance, the issue regarding the maintenance of order is always related to the definition of the aims of imprisonment. As we have discussed in the preceding part of this essay, it remains a highly unsettled and problematic sphere in the context of the British prison systems. In the matter of prison order, how to strike a balance between security and good order for the sake of prisoners' well-being is central to the orientation of daily activities inside prisons. Some of the latest progress in the field involves the Woolf agenda's recommendation of including the legitimate expectations of prisoners as an essential element in the achievement of security and meaningful prison order. From the 1990s onwards, the viewpoint within the academic field which highlights the significance of justice and legitimacy in maintaining prison order has also attained increasing recognition (Sparks and Bottoms, 1995; Sparks et al., 1996).

However, within a political atmosphere that often expresses punitive sentiments towards offenders and which is in favour for securing 'law and order', any systemic arrangement which aims to go beyond the purpose of safe detainment and the minimisation of risks of riot and escape would be hard to achieve. In the following section, we will turn to the particular political context of imprisonment in the UK and examine how it affects the institutional performance of prisons.

v. The Political Context

As prisons are funded by public money and their operation constitutes one of the primary responsibilities of the government, there is certainly a public stake in the way that prison works. However, throughout the modern incarceration history, it is more often than not the case that the particular practices that predominate are

advocated by a certain small group of penal professionals and experts and these are to a great extent insulated from the influence of changing public opinion and electoral politics. But, in the last few decades, issues regarding almost all aspects of imprisonment have loomed large within the sphere of political contention in the UK. Many of the themes we have discussed above used to be within the exclusive territory of penal expertise under the penal welfarist regime, but they are now increasingly subject to politicisation. From the general arguments over what prisons are for, to specific issues such as prisoners' right to vote and even seemingly trivial aspects of imprisonment such as food provision and prisoners' leisure activity, prison-related topics are capable of generating emotional discussion in the mass media as well as stimulating fierce political debates.

However, in the current context of the politicisation of imprisonment in the UK this has been observed to be at some distance from the practice conducted by rational and well-informed participants: the leaders of political parties have found it a convenient route to gain public support if they stick to a tough stand in fighting crime and demonstrate their commitment to security and law and order, whereas the majority of ordinary people keep expressing huge concerns about the risks of crime. Over the past two decades the crime rates in the country have been in stable decrease as a matter of fact (actual crime rates have fallen since 1997 with overall crime having reduced by 32%) (Prison Reform Trust, 2010: 60), but research shows that most people in Britain do not believe that figure and only one in five is willing to accept that crime is falling, and that by contrast up to 83% of people think that violent crime is rising (Duffy et al., 2007). The pervasive feeling of insecurity has led to intolerant attitudes towards crime and offenders, and their impact on crime control politics and policies have in turn shaped the performance of incarceration.

It is thus not surprising that the professional penological perspective in treating prisoners and managing prisons often finds itself at odds with the explicit demands arising from populist politics and the mass media. As the current trends seem to indicate further decline in the autonomy of professionals' control over British prisons, for the purpose of directing imprisonment practices into a morally defensible

trajectory it is no longer sufficient to rely in the conventional fashion on the reproducing and testing of a normative consensus within the relatively close group of penal professionals: such a position often proves to be impotent when it encounters the apparently ‘irrational’ forms of public sentiment and political discourses referring to prison issues. The reasons why conventional penal rationality has failed to guide the public emotions in this case are multifold; yet an important one is related to its often self-referential characteristics – in the absence of any universal normativity, the performance of the conventional penal rationality and its values is less likely to claim overall validity and thus it lacks the necessary strength to win the battle with populist politics. We will carry further our study of this issue in Chapter 4, which focuses on the dynamics of populist imaginaries of imprisonment.

vi. Key Challenges for Practices of Imprisonment in the UK

Based on the discussion in the preceding section, we are now able to summarise some of the key challenges faced by practitioners and theorists working for the improvement of prisons in the UK. They include:

a. Challenge of imprisonment scale

The total scale of the prison population not only makes the UK prison system stand out among its European counterparts, but also gives rise to enormous fiscal and management problems.

Moreover, the high proportion of prisoners among the general population also means that the penal regime of the society keeps a substantial number of its citizens in custodial institutions – this inevitably engenders legitimacy questions regarding the custodial regimes in the country as well as the existing socio-political arrangement which makes them possible.

There are also legitimacy challenges when it comes to the minority groups and non-citizens detained in British prisons – foreigners, black people and other minority

ethnic members, the urban 'underclass' and other disadvantaged groups – whose representation in prisons is markedly higher than in the general population. Investigations made on such grounds should also be associated with more wide-ranging concerns about social and political justice which need to be addressed beyond the practical considerations of constraining inmates' numbers and the expenses of running the institutions.

b. Problems about prison conditions and good order

The second challenge refers to the improvement of the living conditions of prisons and the quality of everyday activities for prisoners and staff. Apparently this represents a rather conventional and practical challenge for all prison systems. But, as we may note from the preceding discussions, to meet this challenge firstly requires an acknowledgement and understanding of the specific context of the incarceration practices in the UK, which also involves a broad range of issues (the orientation of prison objectives, the public justification and politicisation of prison operations) that go far beyond the fulfilment of narrowly defined practical ends.

c. Controversies about institutional aims

This is not a novel challenge either. As has been shown in the foregoing discussion, the uncertainty about the objectives of the custodial institutions raises a direct question about the normative grounds of their performance. In the contemporary field of imprisonment in the UK, this problem remains a prominent one and it can by no means be bypassed in any serious pursuit for a better future for the regime (or its alternatives).

d. Penal rationality vs politicised punitiveness

This challenge mainly refers to the problematic relationship between the operation of incarceration and the dynamics of political involvement in the penal sphere in the UK. The preceding discussion has referred to the tension between the political output and the traditional kind of penal rationality in processing practical and normative

issues concerning the exercise of the power to punish. This challenge seems to be more UK-specific than the other three, as the phenomenon of the intense politicisation of penal issues is not commonly observable outside the Anglo-American countries (Cavadino and Dignan, 2006; Bondeson, 2005 and Nelken, 2005).

Yet it also involves more general questions regarding the relationship between different patterns of performance in normativity regarding the exercise of penal power – even in those penal regimes which operate primarily free from the pressures of public sentiment and political involvement, the tension between professional rationality and intuitive expression is still inherent in the subject, although in a latent way.

It is often noted that the different aspects of the circumstances and challenges addressed above overlap and exist in close interconnection. Moreover, the preliminary examination of the four categories of challenges may have already indicated that none of them are purely technical or speculative; instead they combine both practical and normative elements.

vii. Supplementary Discussions

It is important to acknowledge that the discussions offered above are not yet sufficient to cover all aspects of the circumstances of the imprisonment practices current in the UK. And it requires more efforts to figure out a comprehensive account of that. Yet the current section attempts to fulfil the task of providing a descriptive framework for addressing the basic context of imprisonment in the UK, upon which the studies in the following chapters are carried out. In each of the chapters, more contextual information will be added in the discussions where necessary.

We also notice that the circumstances of British prisons have so far motivated intense political engagement and public concerns which have generated a need for reflecting and reworking the normative foundations of the whole praxis of imprisonment in

terms of its defensible purposes, effects, alternatives and broad socio-political implications. In this respect, the dynamics of imprisonment in the UK involve an inherent but not yet concluded normative dimension, which is reflected in a variety of attempts to tackle, manage, frame, argue for and against the current imprisonment complex from diverse points of view. Along with the almost routine political tone of adhering to tough crime control policies and ‘prison works’ mottoes, there are not only widely disseminated tabloid reports voicing the populist (and often punitive) demand for penal measures, such as longer and tougher imprisonment, but also more moderate discourses in support of traditional liberal values in relation to inflicting punishment.²⁴

Moreover, it has been observed that the operations of incarceration institutions themselves have also undergone certain forms of transformation or adaptation in terms of the specific techniques, strategies and ‘internal logics’ that are being applied in them, which often involve latent but significant changes in - or implicit appeal to - the normative assumptions that orient these institutional practices.²⁵ Those highly divergent sources of practical knowledge, notions, opinions and discourses have together constituted the principal cognitive structure upon which any substantial changes and reforms in imprisonment practice in this country will have to draw in the near future. As we have tried to demonstrate in the introduction section, they represent the social imaginary spectrum of post-welfarist imprisonment, which provides the starting point for our inquiries into the normative performance within the field and the enterprise of re-normalising the imaginaries of imprisonment. In the following chapters, we will specify the representative forms of imaginaries that we are going to probe into and our methodological approach to the study of their normative performance.

²⁴ We will discuss this further in Chapter 3 (II.ii).

²⁵ We will discuss this in more detail in Chapter 5, which investigates the dynamics of risk-oriented imaginaries of imprisonment.

Chapter 2 Methodology

I. Challenges and Objectives

In the latter part of Chapter 1, we have provided an overview of the current situation of British prisons. What stands out in this is the acute tension between the widely perceived failures at various practical levels of the regimes and the highly divergent and fragmented discursive spectrum which is no longer able to engender any fundamental consensus regarding the goals and purposes of the custodial practice. Compared with the penal-welfarist era and the earlier penal reform phases in the UK, we can observe that the contemporary field of imprisonment is largely devoid of any universalist vision of those penal ideals that are vital to modern penal regimes in mobilising prison reforms and granting the regime a moral character. Moreover, it seems to lack any genuine universalist aspiration at all. Even though, following the decline of the traditional rehabilitative paradigm, we have witnessed the emergence of various new approaches towards redefining the role and tasks of prison, none of them have yet demonstrated any prospect of constituting a new overarching framework for defending the legitimate grounds of custodial regimes and illuminating their reformatory future. On the contrary, it has become increasingly evident that the current discourses about imprisonment are found to be either drastically punitive or characterised by cynical retreat or pragmatic calculations. This suggests that the contemporary predicament of British prisons is not one that is confined to practicality, but has profound normative implications. Our examination shows that the legitimacy deficit of the incarceration system cannot be resolved simply by pursuing certain practical goals, such as controlling the scale of the detained population and allocating more resources to make the prison a more secure and less detrimental place for its inmates and staff; instead, it can be addressed appropriately only when the ways of conceiving of the role and purpose of imprisonment have been thoroughly reflected upon, revitalised and re-normalised.

The challenge we face is thus to find a way of uncovering and making intelligible the particular normative realities of the contemporary custodial sphere and finding out what is required if we want to make things different from their problematic status quo. In order to carry out this task, we need to deal with an area that has not yet received sufficient attention and examination in the criminological literatures, namely the normative performance of penal imaginaries. The methodological challenge thus concerns how to process the particular normative materials in the form of penal imaginaries in a way which can relate the findings adequately to the pursuit of our demonstrated objective of revitalising and re-normalising the post-welfarist imprisonment spectrum. As we will make clear in the later part of the chapter, this methodological challenge is intimately connected with the fact/value dichotomy in social scientific studies. What we need to do is to search for an effective methodological approach to overcome the limitations of the dichotomy and make feasible a productive enquiry into the post-welfarist normative performance in the imprisonment field.

In this chapter, we will first review two representative approaches to normative studies in the penological field. On the basis of that, we will discuss why we need an alternative methodological approach to treat the subject matter of our research. In the major part of the chapter, we will try to display a broadened perspective of normative studies by re-interpreting Durkheim's moral secularisation project and his social-historical hermeneutics approach. Drawing on these insights, we will proceed to develop and outline the particular methodological scheme for our research project, one that is based on the concept of introspective normativity and resorting to its analytical-evaluative perspective.

II. Two Existing Approaches to Normative Penological Understanding

i. The Normativist Approach

This particular approach covers a wide range of theoretical undertakings which seek to ‘reason’ about good penal norms and principles (in their respective perspectives) and make them the moral (and usually epistemological) basis for handling the contestable issues in the penal field such as the justification of legal punishment, the constraints on it, the individual’s moral rights, the nature of a just social order, etc. It is easy to see that they employ doctrinal or philosophical analyses as the major tool to establish their ideal visions about what a just punishment system should be and to decide the specific penal issues in accordance with these analyses.

The normativist approach within the normative penological discipline can be traced back to the initiating phase of the modern punishment systems, when the legal theorists and moral philosophers, including Kant, Beccaria, Bentham and others, managed to delineate the essential ideological landscape for speculation upon the normative foundations of legal punishment. All of the major justifying rationales which are familiar to contemporary prison students - deterrence, rehabilitation, incapacitation and retribution - were addressed by those early modern penological thinkers in one form or another.¹

However, what interests us here are the more recent theoretical undertakings in the discipline of normative penological studies which, in the context of the loss of faith in the rehabilitative paradigm and the ‘death of the social’, call for a resurrection of the ‘great debate’ about the moral justification of punishment, and a ‘fundamental reexamination of goals’ (Bean, 1981; von Hirsch, 1986: 4).² As those efforts have been largely oriented to suit contemporary circumstances and audiences, they constitute the major sources for us to probe into the current normativist approaches dealing with penological topics. Due to the huge amount of literature in this field, in the present section we seek to select some representative cases for discussion, and we hope that this work can help to illustrate how we view the contemporary normativist approach as a particular method within normative penological studies.

¹ As for the normative penological thinkings in the enlightenment phase, we can find their delicate elaborations in a number of key texts (e.g. Kant, 1991; Bentham, 1962; Beccaria, 1964) as well as in numerous literature which provides reviews of and further discussions on them (e.g. Jenkins, 1984; Salter, 1999; Valier, 2002; Beirne, ed, 1994).

² See Rose (1996) for his discussion about the phenomenon of the ‘death of the social’.

For most of these normativist analyses, what looms large within their perspective is first of all the need to settle the ‘first principle’ for the whole structure of discourses. With regard to legal punishment, the predominant effort is devoted to the revelation and defence of the fundamental rationale for justifying its employment. Since almost every such fundamental justification was articulated in the early penal philosophical texts and is by no means novel, such analyses usually involve the genealogical discussion of the existing philosophical arguments pertaining to their favoured principles. On the other hand, the rival theories and philosophies are often identified and subjected to examination so that the righteousness of the claimed theories can be further re-affirmed. On the subject of imprisonment, we can find quite polemical normativist arguments about its ‘fundamental goals’. One of the most prominent refers to the revival of the retributivist approach, which has been closely associated with the criticism of the treatment model which featured in the penological debates during the 1970s in the UK. A large number of theorists have produced voluminous writings in favour of this stand and have provided a rich body of normativist defences for it since then (e.g. von Hirsch, 1985, 1986; Moore, 1995, 1993; Kershnar, 2000). Among those works, we can often discern a strong attack upon the utilitarian or consequentialist logic which buttresses the practice of legal punishment, and particularly confinement, as a means of crime prevention. From their perspectives, moral appropriateness should be held as superior to social utility when it comes to punishment. For example, in elaborating his ‘just desert’ theory, Andrew von Hirsch made great resort to Kant’s categorical imperative which stated that individuals should be treated as ends rather than as means and thus rejected the utilitarian premise that the suffering of a few people can be made good by the benefits accruing to many. From this moral-philosophical standpoint, a penalty is thus ‘not just a means of crime prevention but a merited response to the actor’s deed, ‘rectifying the balance’’ in the Kantian sense and expressing the moral reprobation of the actor for the wrong’ (von Hirsch, 1986: 51).

In accordance with this moral-philosophical style of reasoning is the way in which the chief research questions are organised. From the general level ‘grand’ questions

to more specific ones, the normativist approach is accustomed to a pattern which resembles a philosophical debate. They are put forward in a way which invites comprehensive moral philosophical speculation and implies a significance that goes somewhat beyond temporal-spatial particularities.³ Since those normative questions per se are not very context-reliant, abstract analytical models and the method of ‘gedankenexperiment’ is often applied to process them. In the case of von Hirsch’s theory, for instance, the author carried out such an experiment by imagining what would happen if society responded to crime in a morally neutral fashion, where the result of the test, unsurprisingly, led to the confirmation of the author’s moral theory (1985: 51).

What if there is a tremendous gap between the ideal moral state of punishment and the social reality of structured socio-economic inequality, as well as its damaging impact on the individual’s moral agency? Again, the normativist approach often resorts to abstract analytical models to address the ‘variations’. Lippke (2007), who in his imprisonment studies adheres to the retributivist line of argument and advocates ‘less restrictive and degrading forms of confinement’, has offered a typical example in this regard. Being fully aware of the disparity between the ideal conditions for applying the retributive principle and the problematic social reality, the author developed a two-level analysis to address this. The A-level analysis deals with what imprisonment should be in a ‘reasonably just society’, whereas the B-level analysis addresses cases where such a condition is missing. Depending upon each specific missing element in the principle normative scheme for confinement, the author then seeks to make corresponding modifications. By applying this strategy, the author thus manages to preserve the integrity and coherence of the supported moral theory while extending it to a complicated socially realistic context.

³ For instance: ‘Once a murder has taken place, is the only reason for penalizing the murderer to prevent subsequent violations by him or others? Or is there, at that point, a retrospective reason for punishing – that the murderer deserves to be punished? And if so, how is the notion of deserved punishment to be explained? (von Hirsch, 1986: 47)’ And with regard to the prison and prisoners: ‘Should their basic physical and psychological welfare be assured? Should prisoners be denied access to paid labor or, alternatively, forced to work? To what extent should they be granted autonomy over their lives? Should they enjoy any privacy? (Lippke, 2007: 1)’

Given the prominence of the ‘first principle’ within the normativist approach, it is hardly surprising that its application has scarcely eliminated the moral theoretical perspectives which are derived from disparate ‘first principles’. In the imprisonment discipline, there are also alternative approaches to retributivist theories, but whose method of discursive construction is rather analogous to such approaches. We may take the abolitionist approach as an illustration of this. Its central claim is totally contrary to that of the retributivists: there is no acceptable moral basis for the state to inflict penalties and the existing penal system should be replaced by non-penal alternatives.⁴ Yet the abolitionist theory may also employ a similarly normativist approach to establish and defend its claims. In one such undertaking, Boonin (2008, chapter 3) in fact advances his abolitionist analyses in a way that is parallel to retributivist theories but by making counter-arguments against retributivist reasoning. On the other hand, abolitionist theories also involve extensive ‘revival’ of grand moral philosophical questions, but they tend to resort to a different genealogy from the enlightenment thinkers favoured by retributivists.⁵

Furthermore, we may also see the application of the normativist approach outside the academic sphere. It is not uncommon, for instance, to find it in the public discourses about legal sanctions and prisons, which may be generated by diverse actors, ranging from religious leaders to victim-rights representatives. In those cases we can discern very wide disparities regarding their respective normative appeals.

Let us consider then whether the normativist approach can work as a suitable method for treating the subject-matter of our research project and achieving its target?

In the first place, we can see that it represents the most straightforward way of advancing normative thinking, and there are plenty of powerful ideas that have been engendered in this broad tradition. Most often they also enable audiences to

⁴ There are great variations in perspectives and analytical approaches within the abolitionist tradition, in this section we only touch on some limited aspects of it and pay major attention to its normativist representation. For more comprehensive visions on the topic, see the penal abolitionist works: Mathiesen (1974 & 1990), Boonin (2008) and Christie (2004).

⁵ In this case, more diverse sources of ideas are consulted, such as Aristotle, Hegel, Rousseau, Spinoza, etc. See, for example, one of the recent abolitionist works by Ruggiero (2010).

recognise what constitutes the essential normative foundation which underlies specific penological claims, particularly when their different normative premises are exposed as being in sharp contrast with each other.

However, such a methodological approach also has obvious shortcomings when it has to address audiences who do not share its substantive ‘first principle’ assumptions – a situation which would frequently occur in those contemporary societies where value pluralism has been a dominant feature in the discourses of public life. This is also related to the inconclusive nature of the normativist approach *per se*. As the foregoing discussion shows, the normativist style of argument may be applied within divergent moral theoretical perspectives and yet achieve the same level of internal coherence. Under such conditions, the normativist approach may well succeed in reinforcing the allegiances of those people who share its core claims and expanding the approach to include others whose beliefs are logically associated with it but to whom it is not yet normatively ‘obvious’, but its persuasive effect would probably shrink considerably once it reached beyond the circle of the target audience and had to compete with other normativist discourses which are not short of logical coherence and whose central appeals attract and resonate well with their respectively targeted audiences. For this reason, we can hardly expect the normativist approach to reach any substantive consensus regarding normative understanding in the post-welfarist imprisonment sphere. On the contrary, in the face of the multiple pluralistic strands of penal imaginaries, it tends to consolidate the tensions and contradictions between their respective moral premises rather than to reconcile or integrate them in any decisive direction.

Secondly, the normativist approach in essence clings to the ‘value/fact’ dichotomy, whereas it tends to conceive the normative facet of the penal sphere as a realm of debate between different abstract values and norms. This means that it has a rather limited capacity to address the particular normative realities in a given context, particularly with regard to the post-welfarist penal dynamics.⁶ Accordingly, it also

⁶ Garland (1983 & 1990) argues that the moral philosophical approach within the penal field lacks a proper understanding of the complicated social underpinnings of punishment and simply treats the question as an abstract one of how to respond to those individuals who commit offences. In his view,

lacks any appropriate means to establish an inherent connection between its normative queries and the examination of multiple forms of penal imaginaries in their concrete socio-political settings.

Finally, and most importantly, the decline of universal normativity is considered by us as constituting the chief normative predicament in the current imprisonment field, but this challenge can rarely be met by a methodological framework based on the normativist approach. In fact, it usually shares the universalist assumption that there is one essential normative solution to the problems of punishment and that the disagreement between different normativist theories mostly refers to what this solution is. However, in a context which is deeply divided and fragmented by pluralistic normative visions, the normativist approach can seldom capture its idiosyncratic character but is inclined to impose one homogeneous model upon the inherently non-homogeneous normative realities. Yet to seek to eradicate differences within the spectrum has proved not only infeasible, but also counterproductive for the endeavour to direct and mobilise its transformation.

Drawing on the discussion above, we can reach the conclusion that in order to pursue our research goal, we need a methodological approach other than the normativist one.

ii. The Sociology of Punishment

The other approach we want to discuss refers to the enterprise of the sociology of punishment. It is noteworthy that this is by no means a single approach, but consists of very diverse research bodies and methodological perspectives. There are Foucauldian approaches which centre upon the analyses of the relationship between power, discourse and the technology of government (Foucault, 1977; Smart 1983; Burchell et al., eds, 1991); and Marxist approaches which examine the connections of the penal system with the particular political-economic and class-struggle

the moral choice is only possible when the social implications of the penal dynamics (power, ideology, domination, cultural sensitivity, etc) have been adequately examined, and this forms the weakest point of the moralistic theories. We will consider this point of view again in the following section which discusses the sociological approach.

structures in the industrialised societies (Rusche and Kirchherimer, 1968; De Giorgi, 2006); and also social psychological and cultural studies of punishment which explore the cultural sensitivities underlying society's penal performance (Ferrell et al., 2004; Ferrell, 2008; Young, 2007); and also feminist approaches (Rafter and Heidensohn, eds, 1995; Heidensohn, 2000; Naffine, 1996). Apart from these grand perspectives, there are also massive middle and lower-scale empirical sociological studies within the penal realm, particularly with regard to the prison as a particular 'society of captives'.⁷

Among those sociological works, it is relatively unusual for them to place normative inquiry at the centre of their studies, since their primary interest lies in explaining certain social implications and structural underpinnings of the penalty regimes. Some of those approaches, typically the positivist sociological studies, explicitly reject any direct normative engagement within their theoretical pursuits, and many of them implicitly adhere to the critical distinction between the realm of facts and that of values.

However, this does not mean that these sociological approaches are in principle detached from the normative queries related to the puzzles within the penal field. As we will soon discuss, over the past three decades there has been a growing concern within this discipline about the need to address the political implications of the sociological understanding of penal phenomena. In fact, even the most 'detached' approach among them – the positivist sociology – is nonetheless engaged in certain form of normative construction.⁸

In the present section, our aim is to examine the ways in which these sociological approaches are entangled with a normative penological understanding so as to find out whether they can possibly meet the methodological requirements of our research project. Due to the extensive scope and scale of the sociology of punishment (the works listed above are certainly far from exhaustive), it is quite beyond feasibility, in

⁷ See Sykes (1958), and many others, e.g. Bosworth et al. (2005), Liebling (1999) and Simon (2000).

⁸ We will shed more light on this point in our interpretation of the positivist and non-positivist elements of Durkheim's work, which will be carried out in the next part of the chapter.

such a limited space as we can afford in this chapter, to give a comprehensive review of each of the major theoretical traditions pertaining to the enterprise. However, there is still another alternative approach to the process of our inquiry. Since sociological studies started to become a prominent undertaking within the penal academic field, there has been an ever-growing self-reflexive literature within this discipline, which seeks to uncover what it can aspire to accomplish in the changing social settings, what forms its proper subject-matter, how to make use of the legacy of the classic social theorists, and what role it has to play in addressing the current political atmosphere concerning penal issues (Garland and Young, 1983; Garland, 1990; Sparks, 1997; Loader and Sparks, 2005; Garland and Sparks, 2000). Apart from this, there is also a rich body of concrete researches dealing with contemporary penal issues, which are closely associated with it (some of them are produced by the same authors, e.g. Garland, 2001a). Those works together present a general self-understanding of the sociological strand of studies in the UK and also provide resources for comprehending how it is actually carried out. Drawing upon them, we are thus able to figure out how the sociological approach is, actually and expectedly, applied to deal with the contemporary penal phenomena and whether it constitutes an appropriate method to address the post-welfarist normative predicament and to meet our research purpose effectively.⁹

The sociological approach in studying these penal issues, in particular the strand of social analysis which has invested a broader interest than the positivist-empiricist research approach, started to thrive in the UK from the 1960s, when the orthodox penological framework was undergoing harsh criticism within the academic realm. The emergence of critical criminology questioned the very premise of traditional penology that views penal practice exclusively as responses to crime and offenders by articulating a theoretical angle which exposes how criminal justice produces its own objects (the deviants) and exerts control over them through its selective

⁹ We are aware that this strategy for narrowing down the scope of the sociology of punishment which is to be examined has a marked limitation in excluding the important methodological insights embedded in certain prominent theoretical traditions. In order to remedy this limitation, we will extend the methodological discussion to include some more in-depth issues regarding the sociological approach when we undertake the task of interpreting and reconstructing Durkheim's work in the following section.

labelling strategies. This undertaking thus called for a thorough re-examination of the social and political underpinnings of the penal systems. On the other hand, the revival of the interpretation of the social theory classics and the publication of Foucault's studies on discipline provided a broad range of theoretical perspectives for understanding the practices in the penal realm in a way which is far more comprehensive and multidimensional than orthodox penology. Such works, especially those which emanated from Marxist-Foucauldian perspectives, sought also to install a political dimension into penological studies, not least with regard to the central significance of the role of power in determining the penal relations and discourses in society.¹⁰

Therefore, in the development of contemporary social studies of punishment within the UK, there has been an abiding interest in overcoming the conventional technicist and positivist ways of accounting for penal practice and promoting an understanding which is not purely descriptive and explanatory, but more politically sensitive and normatively reflexive than 'administrative penology' (see also, Sparks, 2007b and Garland and Sparks, 2000). It is this particular normative bearing that captures our chief attention in our probe into these sociological approaches.

To start with, we may roughly differentiate between two general types of normative engagement within the contemporary sociological approaches identified above. One is radical and the other moderate. The radical strand mainly sprang from the critical deviance criminology of the 1960s and those adopting a Marxist analytical perspective. Its methodological appeal is characterised by the point that the social analysis of penal practice should be at the same time a form of 'political calculation' (Garland and Young, 1983). Under this perspective, 'the theoretical and the practical must be seen as inseparable, as ontologically equivalent. In other words, analysis, evaluation and theorising are properly understood as inherent, necessary and irremovable elements in any social practice – whether these practices conserve existing social arrangements (as in the case of technicist penologies), or revolutionise them' (ibid.: 32). How can this aim be accomplished in social analysis? The key

¹⁰ For more discussion about the rise and development of the social understanding of penality in the British academic field, see Garland and Young (1983).

point lies in the exposure of alternative arrangements, which can function to illuminate the partial and arbitrary nature of the status quo of penal practice through demonstrating themselves to be ‘more socialist, more popular, more democratic – which aspire to the paradox of a liberative penalty’ (ibid.: 33). Such alternatives include ‘popular involvement, community discipline, local and informal sanctions [which] are possibilities (and have occasionally been actualities in China, Cuba and elsewhere) with a progressive potential to be developed’ (ibid.: 35). In essence, the radical approach has adopted Marxist attitudes towards the role of theory: it must be oriented to changing the world rather than merely explaining it.

The moderate perspective, instead, gives more credit to the explanatory power of social studies and tends to adopt a two-step analytical strategy to handle the relation between the explanatory and the normative. The first step is to account for how the realities in the penal sphere can be comprehend pertinently; drawing on that, people are expected to be able to carry out the task of the next step: to figure out the normative implications of such findings and decide on the favourable directions and goals of reform and corresponding actions to materialise them. The moderate view is typical of Garland’s (1990) work on the re-interpretation of major social theoretical traditions in comprehending the penal phenomena. Like many other works by this author, it has a close connection with the attempt to address the immanent problematics of ‘the present’. Through the critical evaluation of a plurality of perspectives on punishment (including those of Durkheim, Rusche and Kirchheimer, Foucault, Weber and so on), Garland proposes a multidimensional analytical framework which takes punishment as ‘a social institution’ that involves multiple layers of significances and mechanisms of social functions and representations. This work suggests that in order to respond to the predicament of modern punishment – which has suffered from the ‘lack of a future’ in terms of its ability to re-define a vision that is different from the present configuration, it is necessary to expand the analytical scope of the phenomena – from the narrowly defined framework of administrative penology towards a broader sociological understanding. The diverse angles of those multiple theoretical traditions, despite their disagreement as to what constitutes the essence of punishment, are held to be capable of coexisting within the

same explanatory framework and they can jointly shed light on penal dynamics, after a process of critical examination and reconstruction (Garland 1990).

Apart from this work of theoretical re-interpretation, Garland's (2001a) study of the post-1970s penal complex also provides an example of the moderate form of normative undertaking adopted by the sociological approach. In *The Culture of Control*, the author sought to account for the new penal policies, ideologies and patterns of institutional practices that have arisen in the post-1970s Anglo-American societies and to explore their political, social and cultural underpinnings. This investigation led to the conclusion that what occurred in the post-1970s penal field constituted a fundamental transformation from the conventional regime of penal welfarism towards a more control-oriented and exclusive complex of practices and representations, in which we witness simultaneously the growth of politicised punitive sentiments and the prevalence of pragmatically designed techniques and economic-style calculations. Here it is not our aim to go deeply into the topics handled by this work, as there are already numerous articles and books carrying out extensive reviews, criticisms and further developments of the thesis (e.g., Zedner, 2002 and Matravers, ed., 2005). Our focus is instead on its methodological logic which pertains to the normative undertakings of the sociological approach in general. In this respect, Garland's use of 'the history of present' type of analysis is in line with what he proposes in *Punishment and Modern Society* (1990), as we discussed above. It is basically an analytic approach engaged in the task of uncovering penal reality as it is, and it explicitly understands itself as logically prior to any serious normative engagement, based on the conviction that the latter is possible only when it has been made clear 'what things actually are'.¹¹

Now we are in a position to consider further the two types of normative undertaking with regard to the sociology of punishment. To start with, let us examine the outcome which has been generated in these sociological studies. In the case of the

¹¹ As the author alleged, '[the] present book proceeds with the same critical intent [as Foucault's], but I have chosen to subdue that normative voice until completing my analysis of how this field of practice is constituted in all its complexity and contradiction. One of the abiding lessons of Foucault's example is that if critical theory is to be taken seriously, it will have to first engage with things as they actually are' (Garland, 1990: 3).

moderate approach, which is mostly adopted in mainstream sociological penal studies, there is little doubt about its analytical fruitfulness and the depth of its discoveries. But is it the case that normative insight also follows its social analytical accomplishments, as many of those authors envisage? In this regard, the result would appear to be quite dismal. The analysis of *The Culture of Control*, for example, has boosted the revelation of the puzzles and predicaments within the post-1970s penal sphere, but it has not yet led to any remarkable changes in the normative domain pertaining to it. The fact is that what is entailed in social analysis as such is most often the re-affirmation of some general and abiding normative claims and dispositions (e.g. those against suppression and exclusion – in short, the ‘iron cage’ style of social control - and those supporting more ‘democratic’, ‘emancipatory’ alternatives). But it is hard to say whether the triumph of the social analytical enterprise increases the purchase of such normative claims among their audiences (or, if possible, converts any of those with conservative views of punishment). It is also difficult to assert that this enterprise has brought any substantive changes to the normative landscape of the post-welfarist penal sphere per se.

The discernable lack of normative revitalisation (which was supposed to follow the analytical success) in this problematic field suggests that the moderate approach has crucial limitations in terms of realising its normative aspirations. One marked shortcoming of the approach is that it has not truly overcome the assumption of the fact/value distinction. Indeed, what differentiates it from positivism is that it is mobilised by a strong *interest* in challenging the routine normative framework within the penal realm and stimulating reforms. This *interest*, however, would not necessarily engender any feasible and self-conscious methodological insight as to how to make explicit in a concrete way the normative implications of these social analytical findings. This is not to deny the critical strength of those works, or to suggest that their findings lack any normative relevance. Yet it is important to note that there is great obscurity in the assertion that a value-laden social inquiry would automatically lead to normative discoveries or the settlement of normative puzzles. The two-step logic of the moderate approach somehow underestimates the difficulty of integrating the social analysis and the normative pursuit, and what it actually

achieves is still subject to the separation of facts and values. Despite their analytical richness, we can often find in contrast rather ambiguous, unspecific and vaguely-defined 'progressive' statements or suggestions following the completion of the explanatory task of those studies adopting the moderate stand. In fact, even in those cases in which such 'normative conclusions' take a more sophisticated form than they usually do, they still have to demonstrate that they are an inherent result of the social analysis instead of deriving from the author's personal political or moral preferences, and that the audience should be bound to accept them should the 'analytical part' be recognised. However, such success is not commonly to be discerned.¹²

For this reason, the 'moderate' sociological approach is in our view not an appropriate perspective for advancing inquiries into the normative performance of the contemporary imprisonment field. What we want to target is instead an approach which would be able to concretely engage in the resolution or transformation of the post-universalist predicament, as opposed to mere negotiations about its socio-cultural causes. In this respect, we need to deal with the normative reality per se within this realm and avoid reducing it to certain 'analytic' dynamics, whether they are those of political economy, or the late-modern socio-cultural complex, or neoliberal governance: in the ultimate sense those perspectives can assist, but not replace, the task of re-normalising the present incarceration field.

The 'radical' sociological approach, on the other hand, proposes a higher level of unity of social analysis and normative engagement than the 'moderate' one. However, in this respect, just as in the latter case, celebrated accomplishments in such theory/practice integration have been rare.¹³ As we have discussed already, the

¹² Apart from Garland's work, mentioned above, we can also see the relatively 'feeble' normative output (in comparison with their analytical potency) of many mainstream social studies of punishment which adopt the moderate type of normative undertaking. For example, Simon's (2007) influential work which probes into the dynamics of 'governing through crime' in the contemporary United States provides a wide range of empirical analyses upon the subject, but in terms of generating normative claims from these analyses (a task that the author alleges he will undertake from the start) seldom goes any further than re-affirming certain allegiances of 'ordinary Americans' to a more 'democratic', less 'radically polarised' and 'innovation stimulating' society.

¹³ As Garland and Young (1983: 30) have observed, 'the questions of the unity of theory and practice remain continually at the level of potential, rather than fulfilment.'

radical type of sociological approach understands its role as one of producing new ideas and indicating alternatives. However, in most cases those ‘alternatives’ remain external to the penal reality under examination; that is, they at most present the particular form of ‘political calculation’ favoured by the author, but which would not necessarily gain allegiance from those audiences who equally recognise the flaws of the current penal systems but who are apt to make different normative responses. In fact, many critical criminological publications face the somewhat embarrassing situation that their critical exposure of the dominant practical realm gains much appreciation and applause, whereas their ‘alternative’ normative proposals have been largely ignored, particularly by the policy-making bodies.

This relatively infertile normative accomplishment suggests that the ‘radical’ method still lacks a concrete and maturely developed framework to process the normative reconfiguration of the contemporary penal spectrum. If we trace the origins of these methodological thoughts, we may understand better what has hindered the ‘radical’ approach from realising its normative potential.

The most complete and influential form of ‘theory/practice’ integration among methodological perspectives was presented by the Marxist theories, and the contemporary radical type of sociological studies that we have discussed has inherited its core insights. Under the Marxist perspective, the role of theory is defined as an instrument to change rather than to explain the world, and it is intimately associated with the proletariat’s urgent ‘mission’ of class struggle and the development of ‘class consciousness’. In contrast to the positivist approach, the use of theory is not governed by the need to uncover objective ‘truth’, but to serve the purpose of illuminating the conditions of social existence of the working class, exposing the distortions of the ideologies of capitalist society, defining the imminent requirements of the class struggle and, ultimately, motivating and guiding the realisation of a non-class society. Thus in essence the Marxist theory, in its way of

reflecting upon social reality, is an inherent part of the socialist campaign and is inseparable from the domain of practice.¹⁴

It is important to note that this methodological perspective is intrinsically connected with a typical political project of modernity, which is characterised by a single route of social development (the replacement of the capitalist socio-economic order and its representations within the ideological sphere). Thus the ‘political calculation’ boosted by the theoretical enterprise has a universalist character which is in accordance with the utopian aspirations of Marxism. Though its performance is conditioned by the particular socio-historical occasions and is thus not achieved in any pre-determined fashion, it implies an intrinsic commitment to such a universalist project, without which the immanent content of ‘the political’ in Marxist social analysis would be reduced to a drifting and uncertain state.

From this point of view, we may understand the dilemma of the contemporary radical sociological method dealing with penal issues. To a great extent it has to face circumstances in which this utopian vision is no long in place. As a result, the ‘political calculation’ inherent in its social analysis effectively lacks any overall ‘guide’ for illuminating a concrete direction of normative innovation, and it thus can only appeal to vague notions about ‘more progressive’ and ‘more socialist’ forms of criminal justice. This way of making a normative appeal has no inherent superiority over the normativist approach that we discussed in the previous section, and it instead signifies the awkward situation for radical sociology of striving to promote a value-laden analysis of penal dynamics in a post-universalist context. For the task of addressing the problems of the highly pluralistic normative spectrum of the contemporary incarceration field and mobilising its transformation in a positive fashion, the radical sociological approach, as well as the moderate one, is then considered to be devoid of any effective methodological solution of the kind required in our research.

¹⁴ The account we offer of Marxist methodological ideas is only a generalised one. There are a number of texts which give a fuller and more comprehensive elaboration of it, such as Marx’s ‘Theses on Feuerbach’; also see Lukács (1971), Korsch (1970) and Althusser (1999).

iii. Discussion

In the above two sections we have examined two representative approaches in dealing with the normative dimension of the penal complex and have found that neither of them was capable of carrying out the research task proposed by our project.

The major methodological problem refers to the dichotomy between the factual and the normative, which renders counterproductive much of the endeavour to uncover the innovative potentials of the normative penal spectrum and to revitalise its performance. In the case of the contemporary sociological approach, there has been inspirational reflexion upon the necessity of overcoming the dichotomy, as well as proposals for a better unity of the two aspects in analysis, but not sufficient means to its fulfilment.

As we can see from the foregoing discussions, both the normativist and the sociological approaches understand their role in normative undertakings as one of providing ‘new ideas’ or ‘alternatives’ to the existing penal practices. Yet for the post-welfarist imprisonment field, which is characterised by the decline of universal normativity and the fragmentation of pluralistic normative claims, we need a method that can enable us to *work with the particular normative realities* in a self-conscious and reflexive way and to direct their transformation. In this respect, the two existing approaches we have discussed are lacking any holistic perspective for systematically engaging in the transformation of the post-welfariest normative realities in the imprisonment field. Their specific normative claims thus lack any more solid basis than the demonstration or suggestion of individual authors’ political and moral preferences. There are no strong grounds for them, then, to ask for the allegiances of the public to their normative orientations, or to attach a morally superior status to them as against all the other post-universalist normative claims.

Therefore, we need new methodological tools to carry out our investigations. In the rest of the chapter we will seek to provide such a methodological framework by

probing further into the possibilities of bridging the factual and the normative on the basis of interpreting Durkheim's work and exploring its applications within contemporary incarceration studies.

III. The Method of Examining the Performance of Introspective Normativity

i. Durkheim's Social-historical Hermeneutics: the Methodological Source

As has been indicated in the preceding paragraphs, we need a peculiar research method to address the normative performance in the imprisonment field without alienating it or reducing it to something else (e.g. political-economic structural change, the transformation of sovereign power in globalisation¹⁵) and without detaching it from the specific social and political settings that constitute its major background. Furthermore, such an approach should also be able to shed light on the direction in which penal norms and ideals can be transformed constructively. In other words, it is supposed to be an analytical tool for illuminating the normative realities of the current dynamics of imprisonment which are reflected in penal imaginaries with a view to improving their performances.

Under such a requirement there at once emerges the tension between the factual and the ideal, the explanatory and the prescriptive. Hitherto there have been a large number of research perspectives which have sought to discuss the distinctive features of the penal ideological sphere in the post-1970s era and which have already produced a rich body of knowledge.¹⁶ However, most of them follow the route of the sociology of punishment and treat the phenomena mainly from an external perspective, that is, they explain them as a particular object of 'knowledge' and of scientific observation. And, as we noted before, when such approaches go beyond their own explanatory undertakings and try to make their own normative claims

¹⁵ See De Giorgi (2006) and Garland (1996).

¹⁶ There are authors like O'Malley (1999) and Bauman (2002) as well as Sparks (2006) who have proposed their respective explanations of the current ideological penal spectrum.

concerning the desirable status of imprisonment, they usually could not do anything more than resorting to certain exterior doctrines or belief systems which are embraced by the individual authors. Indeed, the critical exposure of the post-modern societal transformation (or the rise of neo-liberal politics, depending on the respective locus of analyses) in explaining some of the prominent features of current penal imaginaries does not automatically settle the issue whether they should be dispelled and replaced by the state in favour of some other values: in the methodological sense these two matters cannot be made identical. Since the spectrum of penal ideals is characterised by a tremendous diversity in opinions, the tension between the explanatory and the prescriptive becomes even more crucial and irreconcilable under those perspectives. After all, the challenge that we face is not that of applying a set of agreed principles to judge and rectify the operation of the custodial system, but rather to deal with the perplexing state of penal ideals and principles themselves. Accordingly, we can scarcely anticipate that the research approaches based on the value/fact distinction can manage to tackle the puzzles we confront.

Our research thus requires an analytical method that can overcome the limitations in this dichotomy as it can be observed in the mainstream sociological studies of penal ideology. In this respect, Durkheim's works have provided resources for inspiring an alternative approach to dealing with the sphere of social moralities. In the following sections, we will try to identify the particular methodological elements in Durkheim's sociological approach that are relevant to our concerns and will demonstrate how they can be re-organised to inform the research method we will apply in our analysis of penal imaginaries in the contemporary imprisonment sphere.

a. Why Durkheim? Positivist sociologist versus moral philosopher

At a first glance, Durkheim's works may not appear to be the most appropriate source for the inspiration we seek, because he is usually viewed as one of the leading figures whose theories represent the positivist approach in social studies. He is also the author of *The Rules of Sociological Method*, a book which is concerned with

building a positivist system of sociological research methods. In it he famously claims that social facts should be treated as ‘things’ and should be studied objectively as phenomena that are external to individuals (Durkheim, 1938). His classic analysis of suicide can be viewed as an typical example of how social phenomena can be studied as independent facts regardless of the individual mentalities in society, even in those cases which involve certain apparently personal dimensions of an individual’s life (such as suicide decisions) (Durkheim, 2002). In this respect his approach has something in common with today’s social studies of punishment, which are likewise inclined to treat penal phenomena as a factual realm that is itself objective and external to the individual consciousness.¹⁷

However, what distinguishes Durkheim from most of the contemporary positivists is that he explicitly alleged that his approach should be described as a ‘moral science’ and that social morality forms the primary subject matter of his sociology.¹⁸ While insisting that morality is subject to scientific understanding and should be examined in terms of its reality *sui generis* in a given society, he also maintained the idea that ‘moral science’ cannot be separated from ethics and that it is supposed to be capable of ‘determining the ideal toward which we are heading confusedly’ (Durkheim, 1964: 34). And it is meant to reconcile ethics and science, for ‘at the same time that it teaches us to respect the moral reality, it furnishes us the means to improve it’ (*ibid.*: 36). This position was also clear in the later phase of his research, particularly in his sociological studies of education and religion, which were allegedly directed and instructed by his peculiar normative scheme.¹⁹ Apart from his typology of social organisations, the author is also remembered as one of the prominent advocates of social solidarity and collective ends. That may be the reason why, in the eyes of

¹⁷ Durkheim (1964 & 1992) also made his own particular contribution to penological studies and has inspired contemporary reflections on penal phenomena (e.g. Garland, 1990). Some of his contributions will be discussed in Chapter 4 (II.iv) in relation to the understanding of populist ways of imaging imprisonment.

¹⁸ In the very early phase of his academic career, Durkheim had already demonstrated that his primary concerns were linked to the issue of social morality in the rapidly changing times of 19th century France. For example, this standpoint was stressed in his first preface to *The Division of Labor in Society* (Durkheim, 1964: 32-34). It was also manifest across extensive areas of his research, despite the fact that its particular focuses shifted during different research stages.

¹⁹ See Durkheim (1975, 1973 & 1961). We will return to this point with more discussion in the following sections.

commentators like Ernest Wallwork (1971), Durkheim is above all a moral philosopher.

The contrast between the positivist sociologist and the moral philosopher indicates that Durkheim's approach may somehow involve very different angles from that of contemporary 'social facts' oriented studies. However, the academic critics who have commented on his dual pursuits (science and morality) have scarcely taken any pains to probe into the particular mechanisms in his works which are related to this dualism. Most of them tend to attribute it simply to Durkheim's confusion of two quite different spheres. For example, George E.G. Catlin, who wrote the introduction to the English version of *The Rules of Sociological Method*, asserted that one of the main weaknesses of Durkheim's approach was that it confused science and ethics (Durkheim, 1938: xix). This opinion is not so different from contemporary perspectives assuming the non-transcendable gap between the sphere of value and that of fact. Based on that perspective, to deduce moral principles from the studies of social facts is not legitimate. To resolve this confusion, Durkheim's sociological legacy has to be divided into two distinct parts: one refers to his positivist research into the objective social facts and the other to the author's own solidarity-oriented moral theory.

However, if we examine carefully Durkheim's work in the light of the purpose he aspired to pursue, we will realise that the image that has been created is rather inaccurate and impoverished. For concerns about social morality, rather than pure scientific curiosity, serve as the very starting point of Durkheim's sociological undertaking. In essence, his endeavour was aimed at a profound accomplishment in reconstructing and refounding the moral foundations of the society of his time which was undergoing tremendous transformation. As we will see later, the characteristics of this pursuit are in many respects comparable to the challenges in the contemporary imprisonment field targeted by our research project. It is upon such a basis that we consider Durkheim's work as a distinctive source of inspiration for us to rethink and refine its methodological framework with a view to overcoming the limitations of positivist approaches.

Let us proceed further in considering this point. Durkheim's major ambition and his overall research scheme (which consists of a host of specific research topics) receive systemic expression in his lectures which form the basis of the book *Moral Education* (Durkheim, 1961). Although the main target of those lectures was to provide guidance for school teachers as to how to nurture the moral temperament and habits of their pupils, at the very beginning they propose a sophisticated theory which not only elaborated a general rationale for moral education, but also outlined some broad objectives pertaining to Durkheim's 'moral science'. To describe it briefly, his project was set up as a response to the social and political changes which had created the supremacy of 'modern principles' (rationalism and individualism) as against the traditional revealed religions in the social-moral sphere and the primary target of his sociology, or moral science, was to facilitate the establishment and enhancement of moral bonds under the rationalistic premises of modern society. In other words, it is an endeavour directed towards the building of a secular morality. To achieve this goal, Durkheim assumes that the moral science must make progress in performing two interconnected tasks: the first is to discover the essence of morality and separate it from its religious intermediary *without impoverishing it*; the other is to investigate how such moral realities should be developed and oriented towards the present social conditions (Durkheim, 1961).

It is worth noting that the task of secularising morality is itself a moral pursuit within Durkheim's scheme. It becomes necessary because, with the rise of modern rationalism and individualism, revealed religion can no longer serve as the shelter for accommodating the moral authority of society. In the modern context, sufficient reasons must be given if they are to claim adherence from the members of society. In the social-moral realm non-reflexive orthodoxies and doctrines could no longer claim obedience from individuals as they did in the ancien regime. Instead, they tended to become targets of criticism by those who sought to push the rational principle to cover all social spheres. However, in Durkheim's view it is dangerous to destroy the entire religious underpinning of morality while merely substituting for it certain reductionist 'rational moral systems': 'It was enough, so they said, to teach the old

morality of our fathers, while avoiding recourse to any religious notion. In reality, the task was much more complex. It was not enough to proceed by simple elimination to reach the proposed goal. On the contrary, a profound transformation was necessary' (Durkheim, 1961: 8). The critical challenge lies in the difficulty of *preserving* the substantial element of morality while making it secularised and rationalised. In essence, it amounts to reconciling the sphere of reason and that of belief. Notably, this task resonates with our primary methodological concern as to how to overcome the limitations of the contemporary approaches in addressing the normative aspect of the imprisonment complex. However, when Durkheim elaborated the scheme of 'moral science', the tricky side of the situation (in his view) was the danger of anarchy, which implied that the traditional moral authority became vulnerable before various attacks which questioned its legitimacy and which even sought to pull it down altogether.²⁰ To avoid an anarchic state thus required the moral science to contribute to the creation and development of a new form of morality that would be capable of preserving its force under conditions where rationalism prevails and authoritarian doctrines are not automatically justified.

It is significant to note that in expressing the ideal of a moral science Durkheim refused to adopt any exterior approaches in addressing the predicament of morality in his time. For him, morality per se lies at the centre of his scheme and it cannot be reduced to subordinate representations of some other social phenomena. This position was quite different from the fashionable evolutionary theories (such as the theory of Herbert Spencer, one of his main intellectual rivals) that were current in his time, which were inclined to view moral notions as the result of material development and the adaptation of human organisations (in the same sense it was contrary to classic Marxist dialectical materialism, which treated morality as a superstructure dependent on the circumstances of the dominant economic relationships in society). For Durkheim's moral science, the threat of anarchy was

²⁰ 'For we are living precisely in one of those critical, revolutionary periods when authority is usually weakened through the loss of traditional discipline – a time that may easily give rise to a spirit of anarchy. This is the sources of the anarchic aspirations that, whether consciously or not, are emerging today, not only in the particular sects bearing the name, but in the very different doctrines that, although opposed on other points, join in a common aversion to anything smacking of regulation' (Durkheim, 1961: 54).

firstly a matter concerning *morality* rather than undesired outcomes measured in any utilitarian fashion. Thus its task was not to find substitutes for morality, but to re-discover, strengthen and develop the moral reality so that it could survive and thrive in the modern environment. This is also why religions (particularly primitive religions) formed an important subject matter for his sociology, for they have been the principle sources of the society's moral representations and therefore they are considered as the starting point for the task of uncovering the moral reality and transforming it into a rational form. In Durkheim's words, '[w]e must seek, in the very heart of religious conceptions, those moral realities that are, as it were, lost and dissimulated in it. We must disengage them, find out what they consist of, determine their proper nature, and express them in rational language. In a word, we must discover the rational substitutes for those religious notions that for a long time have served as the vehicle for the most essential moral ideas' (1961: 9). Therefore, the purpose of moral science is ultimately morality itself: it is not merely about scientific discovery and explanation, but is itself a moral pursuit and constitutes a significant part of the enterprise of the secularisation and reconstruction of morality.

It becomes clear then that the core of Durkheim's scheme is practice-oriented and is essentially concerned with settling the problematic issues in the moral sphere per se. Now we can question how this can be made possible within a research approach which is directed towards treating social facts rather than abstract moral notions? This question is closely associated with our own methodological challenge, as we also face a particular normative predicament and need feasible theoretical tools to address it with a view to improving the normative performances within (rather than merely the understanding of) the imprisonment field. Further exploration in Durkheim's works can hopefully shed some light on this question. In the following section we will find that the methodological source of Durkheim's enquiries is far from homogeneous and one-dimensional; it is instead composed of multiple angles and unsolved tensions between each of them. Among them we can identify a specific methodological approach which can be termed *social-historical hermeneutics*. It is this peculiar methodological source that will play a key role in informing our introspective normativity analysis.

b. Directing social studies towards moral reconstruction: Durkheim's strategies

We have discussed the moral element in Durkheim's sociology and have also mentioned the criticism that it risked confusing the relations between science and ethics. Indeed, under the positivist principle of social studies, knowledge about 'facts' cannot determine the sphere of beliefs. Then how can Durkheim's 'moral science' fulfil its goal of directing the project of substantive moral reconstruction and how can it defend itself against the accusation that in doing this it confuses the roles of science and ethics?

In the first place, we can observe that many aspects of Durkheim's sociological studies demonstrate a strong positivist character and it is by no means fortuitous that he is viewed by many as one of the representative figures in positivist sociology. In many of his works, he stresses repeatedly that social phenomena should be treated as 'things', which are external to and independent of the individual's consciousness.²¹ But how can such collective and exterior facts tell us how to act according to the requirements of morality, which is mostly conceived of as falling within the sphere of individual conscience?

One of the strategies that Durkheim employs to address the issue is to establish a set of criteria for distinguishing the 'normal' and the 'pathological' with regard to the performance of social solidarity. If this distinction is plausible, the aim of his sociology can then be reasonably described as facilitating the transformation of morality from the pathological state to the normal one. The crucial point of these strategies refers to how the 'normal' and the 'pathological' should be defined 'scientifically' rather than in any arbitrary or value-laden ways. Durkheim believed this was possible and in his *The Rules of Sociological Method* (Durkheim, 1938: chapter III) he took great pains to establish some applicable principles for its exercise. In general, his attempt was greatly influenced by 19th century biological science. He

²¹ See, for example, Durkheim (1964: 35; 1938: 64; 1961: 5).

developed the notions of the normal and the pathological by analogy with the healthy and morbid states of an organism. What lies at the heart of the dichotomy is the concept of the *average type*: ‘We shall call “normal” these social conditions that are the most generally distributed, and the others “morbid” or “pathological”’. If we designate as “average type” that hypothetical being that is constructed by assembling in the same individual, the most frequent forms, one may say that the normal type merges with the average type, and the every deviation from this standard of health is a morbid phenomenon’ (ibid.: 55). Under this perspective, what is normal can be judged on the basis of observable facts: that it is most widely distributed. But the observation of external facts is not sufficient: the ultimate determination of the normal state requires the revelation of its logical necessity, which is the task of a sociological analysis that uncovers the underlying cause of the dominance of the average type.

It can be noted that this way of establishing normality is deeply oriented towards an evolutionary vision of society. The average types are first of all considered as the most general types and their great frequency is deemed to be ‘a proof of their superiority’ (ibid.: 58). Indeed, as a research tool, this differentiating principle can inspire very revealing findings in terms of the not-so-explicit functions of those social phenomena which assume great generality but are not morally desired in the opinions of lay persons, such as crime and punishment. However, this strategy based on the evolutionary view can hardly justify the claim that the normality established by ‘scientific’ analysis ought to serve as the right grounds for the norms of the society. For example, in a Durkheimian analysis, the existence of crime, due to its ubiquitous distribution, should be viewed as the normal state of society rather than one of the pathologies (ibid.: 66-73). Yet there is an obvious gap between this sociological finding and the penological norms that decide what should be the just response to crime. As a matter of fact, the evolutionary understanding of social normality is no longer accepted as a legitimate way of bridging facts and values in the contemporary imaginaries.

There is yet another strategy that is applied by Durkheim to integrate social studies with moral construction and we can also review it briefly here. It refers to the peculiar kind of narrative arrangement that incorporates a normative element into the depiction or ‘storytelling’ of the social world. In Durkheim’s case, the grand narrative or ‘world view’ constitution centres upon the idea of collective consciousness or social solidarity. On the one hand, it is a descriptive-analytical concept that explains the operations and attributes of specific societal organisations. For example, in *The Division of Labor in Society*, it is applied to account for the different forms of social bonds and their corresponding legal representations. On the other hand, it also suggests what the ideal state of society through the organisation of various elements in the sociological account which gives different meanings as well as different values to various social sectors, goals, behaviours and groups of people. As a result the narrative has succeeded in incorporating its specific moral ends into its descriptive scheme. This is why in Durkheim’s works we usually get an integral impression that his sociological accounts ‘naturally’ lead to the desirable goal of pursuing social solidarity and collective ends.

However, such a ‘natural’ integration of the descriptive and the normative cannot always be sustained when we expose it to reflexive examination. The main reason for this is that the narrative per se is never a fixed account. In fact, there are always counter-narratives (e.g. there are Marxist narratives which involve very different ways of organising the normative status of the elements constituting the social world). In the meantime it is hardly plausible to identify a criterion for deciding which narratives are more ‘true’ than the others. Thus we cannot consider this strategy as competent to bear the task of directing social studies towards reconstruction in the moral field.

c. Social-historical hermeneutics and rationalised morality

We have thus examined two particular strategies that are applied in Durkheim’s works and concluded that they are not pertinent in terms of serving the moral reconstruction endeavour, which is a critical concern for both Durkheim’s ‘moral

science' and our own proposed research scheme. But we will see in the paragraphs below that Durkheim's research also involves a methodological strategy which is rather distinct from (and even contrary to) the positivist approach and grand narrative approach but which turns out to be more effective in realising the author's aspirations as well as meeting the methodological challenge that we confront.

In discussing the moral facet of Durkheim's sociological project, we have already noted that, unlike many other moral theorists, he is rather sensitive to the unique characteristics of performances within the moral domain, which he often treats as analogous to the 'sacred domain' in terms of religious experiences. As he pointed out, '[t]he domain of morality is as if surrounded by a mysterious barrier which keeps violators at arm's length, just as the religious domain is protected from the reach of the profane. It is a *sacred domain*. All the things it comprises are as if invested with a particular dignity that raises them above our empirical individuality' (Durkheim, 1961: 10). Thus, while he was consistently stressing the point that moral phenomena should be treated as 'social facts' and 'things', he also realised that these moral 'facts' are quite different from those of the material world: 'There is something about prescriptions of morality that imposes particular respect from them. While all opinions relating to the material world – to the physical or mental organisation of either animals or men – are today entitled to free discussion, people do not admit that moral beliefs should be as freely subjected to criticism.... The response is quite different from that which a scientific heresy might arouse. It resembles at every point the reprobation that the blasphemer arouses in the soul of the believer' (ibid.: 9).

What we are concerned with here is not merely the unique nature of the moral sphere, but also the proper method of handling it. The tricky part of the job is that if it should be treated in the same way as the material world is by natural science, then the particular dignity of morality would be lost and, accordingly, it would fail to continue to be itself. What has been left is only an 'impoverished and colourless' form of morality. Therefore, in order to approach the realities of morality, it is essential to preserve the moral character of morality and avoid reducing it to something that lacks this significant attribute of dignity, something that is

scientifically ‘neutral’.²² This requirement actually raises the issue of integrating sociological enquiries with moral development. The former must manage to rationalise and secularise morality without losing its moral nature; in this respect it becomes part of the moral pursuit itself, as throughout its progress it cannot be detached from the moral reality *sui generis* and its concrete appeals to the members of society. From this point of view, the positivist approach can scarcely support such an undertaking, for it is always inclined to substitute something else (something neutral and devoid of moral essence) for the moral domain and thus it is unable to present it as it really is.

How then does Durkheim seek to fulfil this task? The preceding examination has revealed that his methodological strategies are far from singular. And we have already concluded that his positivist facts-based approach and solidarity-oriented narrative construction are not capable of doing this. However, as we will soon try to make clear, his works also contain one important resource for taking up the endeavour and realising the ambition of his ‘moral science’. This is the hermeneutic element in his sociology.

By examining and interpreting a number of sociological accomplishments of Durkheim, we will be able to shed light on this particular element of his method. It is dispersed among different territories of his research and by no means constitutes a consistent theoretical framework. However, its application can be reorganised and may form the foundation of a coherent methodology which we will term ‘social-historical hermeneutics’. In the paragraphs below, we will demonstrate how this can be achieved and what its major contours encompass.

Firstly, the most significant feature of this social-historical hermeneutics is that it attempts to shed ‘rational’ light on the various forms of performance in the moral domain and in the meantime to preserve and develop its moral realities *sui generis*.

²² Durkheim stressed the same requirement in his studies on religion; in his contribution to the discussion ‘Religious Sentiment at the Present Time’ he demonstrated that ‘in brief, what I ask of the free thinker is that he should confront religion in the same mental state as the believer. It is only by doing this that he can hope to understand it. Let him feel it as the believer feels it; what it is to the believer is what it really is’ (1975: 184).

For Durkheim, one of the most troubling aspects of the moral domain is its exteriority to individual consciousness. He observes that morality functions in a way that is rather similar to physical forces: it commands individuals to behave as it requires rather than follow their own desires. In short, it is not any abstract system of ideas and notions, but a living force. Thus at the centre of his theories there is the assumption that morality is a substantive reality in spite of its intangibility. It is important to note that the substantive concept of morality is not merely employed to account for the empirical social phenomena, but serves as the normative basis for deciding what the desired circumstances of societal organisation are. In the view of Durkheim, any particular society has its own morality, and thus the modern moral values are not justified in the context of primitive society. In short, there are no exterior standards beyond the moral realities of a specific society which can have an ultimate say in judging its normative issues. Instead of belonging to the individualistic and idealistic sphere, morality is a real and collective domain. It is factual as well as normative.

However, as we have discussed before, there is a tremendous tension between the two realms. If the collective morality is considered as something substantive and factual, there are no reasons why it should not be studied in the same way as the material world is. But in that case how can its unique moral character, which stimulates individual's obedience and respect, be preserved? As we shall see soon, individualism itself has been acknowledged by Durkheim as one of the core elements of the modern morality, and its essential claim is that moral behaviour must be derived from autonomy rather than heteronomy. Accordingly, if morality is understood simply as facts external to individual consciousness, such a tension will become extremely obvious.²³

²³ In fact, the Durkheimian notion of a substantive social being (morality) is one of the most controversial among his commentators. On one hand, it is not purely empirical and cannot be established on the basis of any observable evidence. On the other, it seems to strengthen the conservative disposition against social reforms. See, for example, the discussion of criticisms of Durkheimian sociology by Adorno (Hagens: 2006). However, these critiques seldom notice the essential connection between the idea of substantive morals and the inherent goal of Durkheim's studies in pursuing the construction of a secular morality.

Therefore, the gap between the exterior moral reality and individual autonomy poses a critical challenge to Durkheim's pursuit of moral reconstruction. This methodological difficulty, however, is also related to the author's efforts in developing certain strategies to reconcile this tension identified as such. Unlike the strategies we have discussed hitherto, they are mainly conducted in a hermeneutic style. By exposing the moral sphere in a rational but non-reductionist fashion, they seek to make it internalisable by individuals, who previously tended to accept its dominion as something imposed from outside, real but incomprehensible. These hermeneutic strategies thus try to reveal the realities of morals to those who have been practicing them and enable them to understand and recognise such realities as part of their own being. As the result of this hermeneutics, the rationalised morality still preserves its moral character and its own reality *sui generis*, but it is also developed and more tightly incorporated into the realms of individual consciousness, moral choice and decision-making, which in turn participate more dynamically and more consciously in the society's moral representations and practice.

In the early research phase of Durkheim's work, there was already a hermeneutic element, but it is usually expressed in some kind of semi-biological or semi-psychological terminology. For example, in *The Division of Labor in Society*, apart from his functional-structuralist account of morality, he invested great efforts in the task of uncovering and presenting the moral realities of the social collective phenomena as they are. He was not only interested in revealing the structural levels of different types of moral bonds, but also their concrete dynamics. In this way he tried to make intelligible not only the indirect rationale of morality but the mechanisms through which it got realised: 'Every strong state of conscience is a source of life; it is an essential factor of our general vitality. Consequently everything that tends to enfeeble it wastes and corrupts us. There results a troubled sense of illness analogous to that which we feel when an important function is suspended or lapses. It is then inevitable that we should react energetically against the cause that threatens us with such diminution, that we strain to do away with it in order to maintain the integrity of our conscience' (Durkheim, 1964: 96-97). In analysing the performance of the moral domain, the hermeneutics focused on the exposure of its

living dynamics with a view to enabling the individual readers who would have already experienced it to grasp its comprehensive representations and thus to understand it in a rational light. It is worth noticing that such understandings are different from those informed by professional knowledge. They do not point to any external and previously-unknown factors which objectively cause the phenomena, but work by stimulating the self-reflection of the individuals and acquire their particular strength through the integrating of the exterior and the interior. We may consider another example in which Durkheim provided a hermeneutic account of moral performance in the sphere of punishment and revenge. He vividly described the mechanism through which the society responds to its deviant members; by exposing that, he succeeded in relating the individual reader to the representation of the living realities of such types of moral performance.²⁴ As a result, such realities also enter the sphere of individual consciousness (but not as knowledge of exterior facts) and participate in nurturing the inherent experiences which can underpin the individual's autonomous moral reflection and praxis. Certainly, the hermeneutics does not decide what the individual should believe or whether she should adhere to the realities that it uncovers. Its unique objective is instead concerned with displaying such realities effectively: they are not presented as external phenomena which do not correspond to the individual's moral being, but as a particular sphere that is activating and, in a sense, *real* for her self-understanding.

However, there are notable limitations in such hermeneutic cases. As they are deeply influenced by the logics borrowed from psychology and biology, they are not entirely accurate and pertinent by virtue of displaying the *moral* realities. Such a hermeneutic strategy has the merit of making its content more accessible to its audience (who are

²⁴ See Durkheim's example of a hermeneutic analysis of social response to deviancies: 'That is why a conviction opposed to ours cannot manifest itself in our presence without troubling us; that is because, at the same time, it penetrates us, and finding itself in conflict with everything that it encounters, causes real disorders. Of course, in so far as the conflict ensues only between abstract ideas, there is nothing disastrous about it, because there is nothing deep about it. The realm of ideas is at the same time the most elevated and the most superficial in conscience, and the changes which it undergoes, not having any extended repercussions, have only feeble effects upon us. But when it is a question of a belief which is dear to us, we do not, and cannot, permit a contrary belief to rear its head with impunity. Every offense directed against it calls forth an emotional reaction, more or less violent, which turns against the offender. We inveigh against it, we work against it, we will to do something to it, and the sentiments so evolved cannot fail to translate themselves into actions. We run away from it, we hold it at a distance, we banish it from our society, etc' (1964: 97-98).

familiar with the psychological and biological reasoning-style and tend to accept metaphors and analogies based on that), but it risks losing the idiosyncratic character of morality per se, which is by no means identical to any psychological and biological process. To solve this problem hermeneutics must be made more morally-oriented and should aim at exposing the unique realities of the moral domain per se.

There are, however, also other hermeneutic resources within Durkheim's works which involve attempts to meet the requirement mentioned above. Such resources can often be observed to be entangled with the strategies already identified in this chapter and they are not systematically organised as a single unitary approach. For this reason we need to gather together those discrete hermeneutic elements from multiple texts of Durkheim and re-organise them in the hope of showing how they may inform a coherent approach. Such hermeneutic elements are more commonly found in his later works, in particular the studies of primitive religions and moral education. Based on a thoughtful examination of these works we can identify a Durkheimian approach in *the hermeneutics of norms*, which consists of two parts: the hermeneutics of the formal aspect of morality and the hermeneutics of substantive norms.

The former is represented by his sophisticated theory of moral education, in which he tries to provide a rational account of the social representation of morals (Durkheim, 1961). This effort is closely related to the goal of the secularisation of morality which we have previously discussed. The major challenge of this task, in Durkheim's view, is to disengage moral norms from their religious symbols, and present them in their rational 'nakedness' so that their reality can be felt without any mythical intermediaries: '[t]his is the first order of business: we want moral education to become rational and at the same time to produce all the results that should be expected from it' (ibid.: 11). Therefore there is a need to provide an account of what morality is without having recourse to any exterior notions (like revealed religions). What Durkheim provides is a social-formalistic theory of morality. It views morality as consisting of three elements: the spirit of discipline, social attachment and individual autonomy (We are not going to go into details here but are primarily

concerned with highlighting his peculiar methodological perspective). It is noteworthy that the theory distances itself from the positivist understanding of morality by taking pains to reveal the *internal dynamics* in which the realities of morality get presented. The three elements of morality are discussed not as certain testable factors viewed from an exterior vantage point, but are hermeneutically established, in accordance with an internal gaze upon the living moral performance of individuals. For example, in studying the first element (the spirit of discipline), Durkheim's angle is not oriented towards its role in the normal functioning of the social world, but instead he highlights how it is made possible as an inherent part of the social performances of individuals. Discipline as a moral characteristic is thus not simply viewed as a necessary constraint on individual wills that targets some collective utilitarian ends, but primarily as those interior phenomenological representations that are indispensable to the realisation of the moral essence of every social being: 'If we believe that discipline is useful, indeed necessary for the individual, it is because it seems to us demanded by nature itself. It is the way in which nature realizes itself normally, not a way of minimizing or destroying nature' (ibid.: 50-51). According to this formula, discipline is inherent in those social beings who are by nature 'limited' and whose moral existence can only flourish within certain limitations (in terms of moral ideas and sentiments). In other words, the dynamics of moral performance essentially involve the restriction of the individual will: this must not be understood in terms of means and ends, but as a fundamental facet of the realisation of the moral sphere per se.

Durkheim's specific notions about discipline may be contestable, yet it is important to note that his strategy of presenting morality largely dispenses with the biological or psychological perspectives which can be observed in many of his early studies of social morality, and it turns instead a hermeneutic gaze on those inherent dynamics of moral realities which unavoidably pertain to individual consciousness but which nevertheless preserve a ubiquitous and objective character. In this way, the elements of moral phenomena are unpacked and made understandable for the targeted audience of moral education and, in the meantime, the hermeneutic strategy renders them able to be felt by the audience without losing their 'natural dignity', or the

moral nature of morality. In fact it is also a re-establishment of such dignity within a rational context, and in doing so it strengthens it with the effective interaction and participation of its targeted audience. In this respect, the hermeneutic approach is itself part of the moral pursuit: it enables members of modern society to embrace and revitalise the moral domain reflexively without alienating it or making it become something exterior.

However, we can note that Durkheim's theory of the three elements of morality is mainly concerned with the formal aspect of the moral performance rather than with substantive norms. This means that it is a general perspective and it can be applied in the same way to different contexts of various societies and moralities.²⁵ However, in doing this, the moral science has to restrict its capacity for responding to concrete moral questions in a given social-historical setting, in which people unavoidably face the divergence of substantive norms and the urgency of making choices. The case of Durkheim's pursuit of a moral science demonstrated this clearly: in the author's own time there existed tremendous tensions between conflicting orientations regarding the construction of national morals (e.g. should *laissez-faire* libertarianism or social solidarity be determined as the guiding principle for the future of French society?). Such an essential choice can scarcely be made on the basis of a formalistic theory of morality.

Therefore, if hermeneutics makes the formal or the ubiquitous aspect of morality its sole subject-matter, that means that it is still at a significant distance from its goal, namely that the targeted audience of moral education needs to be empowered to approach the realities of the moral traditions which appear to them as exterior, to comprehend them as they are and integrate them proactively into their self-understanding and moral actions. In short, we can hardly anticipate that a formally understood morality can claim any 'sacred' character in relation to its audience, for whom it still cannot be fully distinguished from the general 'factual sphere', despite its being presented in hermeneutic depth. Moreover, a moral science which is stripped of the substantive content of its norms and which is concerned merely with

²⁵ The third element, 'autonomy', however, is deemed by the author to be unique to modern morality.

their common constituent features risks playing down the moral nature of morality and opens the door to the manipulation of the moral sphere. In the extreme case, 'being moral' would be detached from the question of 'what moral end should we pursue in our concrete living circumstances?' and it would be held as a sufficient condition in itself for realising the individual's social identity as well as the solidarity of society. Differing from plain moral relativism, which tends to refrain from engaging in orthodox moral construction, such a position adheres rather closely to the practice of 'moral engineering': its major goal is to help the society become effectively moralised, whereas it does not matter much what specific norms are selected to meet the goal. Apparently to treat the moral sphere in this way involves great dangers, as is manifested in the history of 20th century, and it is also utterly contrary to the third element of modern morality: individual autonomy.²⁶

Therefore, for the purpose of moral reconstruction, we also need to extend the method of hermeneutic introspection into concrete norms and the specific moral systems. It is not rare, in Durkheim's studies, that the specific content of substantive norms is treated as their subject matter. In spite of the fact that the positivist approach prevails in most of them, there are also a number of noteworthy cases which involve the application of hermeneutics. This can mainly be observed in his studies of penological norms and family norms.²⁷ In those cases the author tended to situate his enquiries within a particular social-historical context. His strategy will be summarised in the following paragraph.

At the beginning of these studies the audience is presented with a set of particular norms (e.g. the penological norm of proportionality, the prohibition of incest and norms regulating sexual relationships) which are dominant in her time, but which nonetheless are experienced by her as external forces: she knows that she should

²⁶ Durkheim (1961: 118) also realises the tension between autonomy and the commanding nature of morality, and his tactic to reconcile the two spheres is related to the belief that good understanding, or knowledge, of the moral forces and their rationales will lead individuals to embrace and adhere to the discipline of morality out of their own free will. However, as we have discussed, knowledge of morality per se cannot transform the exterior nature of morality and fully resolve the tension between it and individual autonomy. In its place there is a need for hermeneutics, which is capable of empowering the individuals as well as the society to re-discover the moral realities as part of their pre-existing beings and to make authentic moral decisions in accordance with them.

²⁷ See Durkheim (1964, 1992, 1979 & 2003).

obey their commands and she can intuitively perceive the norms as something real and vibrant, but she yet does not know why they are as they are and what are the sources of their moral authority. Most often she has to depend on various commonsensical discourses (for example, crime would increase if the principle of proportionate penalty was dismissed; incest leads to genetic diseases) to justify her moral intuitions and adherence to those norms. But, under rational scrutiny, such discourses would receive little support from empirical evidence. In a word those discourses are vulnerable to serious challenges and, as a matter of fact, they are a compromise with the exteriority of those norms that they buttress, rather than effectively transforming it into the sphere of autonomous moral decision-making.

The strategy of social-historical hermeneutics is developed in order to address such a situation by uncovering the performances of the norms within a social-historical context. First of all, it accounts for how the patterns of these norms have changed over time and how their moral realities have sustained and develop into their present forms. By doing this it manages to provide a rational framework for understanding these norms as they are. Secondly, it is concerned with unpacking and transmitting the sacred nature of the moral domain to its audience. In this respect, it does not only require a macro account of why the norms are what they are, but also an introspective hermeneutics which is capable of making the concrete realities of the 'moral' sphere effectively present to the audience who presumably already accept and have even internalised the norms but who previously perceived them as something exterior to their autonomous moral consciousness. The effect of this introspective hermeneutics is then to connect the macro social-historical account of norms with their living performances, which penetrate and contribute to the construction of the individual's own moral being. As a result, the moral realities of those norms which are being hermeneutically investigated are no longer perceived as exterior, but are established as the introspective realities which are inherent in autonomous moral decision making (of individuals as well as particular social groups, both of whom can be considered as both the audience and the subject of moral science and moral education).

It is worth noting that the outcome of such social-historical hermeneutics is not merely knowledge or a rational account *about* norms, but also the enrichment of morality itself, for it ultimately participates in the vital task of moral reconstruction (of various under-rationalised but still vibrant normative resources and traditions). For its audience, the norms which have been hermeneutically unpacked can thus effectively constitute what she can embrace and draw upon in exercising her particular moral autonomy. And this outcome is in total accord with the purpose of Durkheim's moral science, i.e. establishing a secular morality which is both *rational* and *moral*.

The social-historical hermeneutics strategy, however, is an ideal case that is based on an interpretation of various studies of Durkheim. It is only partially realised in his works. His studies of the penological norms, for example, achieve a potent social-historical account of patterns of penal practice (Durkheim, 1964 & 1992), but they are deeply influenced by functionalism. The hermeneutic element is relatively weak in that case.

In his later research phases, however, this element has become more and more evident. His studies in the field of fundamental family and sexual norms have provided a rich body of resources in this respect (Durkheim, 1898, 1915 & 1979). On the one hand, his research extended to include those phenomena in primitive societies in which the earliest forms of family and sexual relations can be found (e.g. the exogamy system in clan societies); on the other, it sought to identify the contemporary norms regulating such relations (e.g. the prohibition of incest). What the author tried to highlight was not simply the history of 'changes' in sexual and familial norms, but the connection between those distinctive systems in the light of their hermeneutic reality for the members of particular societies. The introduction of a social-historical framework serves to enable a re-discovery of what constitutes the binding nature of the norms that are still living in the audience's daily sexual and familial interactions. Such an approach does not only aim to explain and provide insight, but it also fulfils the task of moral education. Unlike the traditional dogmatic and authoritarian way of instilling familial and sexual values into pupils, the

Durkheimian approach based on social-historical hermeneutics first acknowledges the profoundly perplexing and even ‘mysterious’ character of sexual norms (Durkheim, 1979: 147-149), and then tries to expose it to a rational hermeneutic light. This process essentially requires the engagement of the audience: only when they are able to approach the reality of such a normative domain with all its perplexing and even paradox facets can the goal of successful moral education be met. In an ideal situation, the norms with their particular reality are reflexively recognised by the individual, who is then enlightened as well as empowered to make authentic decisions in pursuing the peculiar moral ends involved in her familial and sexual life.

Therefore, social-historical hermeneutics can be viewed as more effective and pertinent than those other strategies (especially positivist methods) which have been discussed already for meeting the challenge within the Durkheimian project of moral construction. However, it is also necessary to be aware of the fact that this effect has been proved merely in a very limited area within Durkheim’s studies (familial and sex norms). Its potential for informing our research method for dealing with the normative performances of imprisonment still needs to be carefully examined.

ii. Developing Durkheim’s Methodological Thoughts to Serve A Different Context

The approach of social-historical hermeneutics identified above can be viewed as aiming at the essential requirement of bridging *factual* research and *normative* reconstruction (as pursued by Durkheim’s ‘moral science’). Notably, this is also the central concern of our thesis. As we showed at the start of this chapter, what puzzles contemporary custodial practice in the UK has a profound normative dimension, which has not yet been addressed appropriately in the current literature studying the post-1970s ‘penal crisis’. Both the normativist analytical and the positivist sociological approaches, as we discussed earlier, have failed to carry out the task of pointing out the direction of the normative enterprise in the post-welfarist imprisonment field. The former inherits a logic and a conceptual structure which essentially serves a universal normativity which is no longer in place, and its

capacity for dealing with the current dilemmas pertaining to the fragmentary and pluralist normative landscape is limited. The latter, on the other hand, lacks any suitable theoretical tools to address the issue of normativity per se, and this has weakened its capacity to defend its own particular normative orientations and to contribute prolifically to normative pursuits within the current custodial spectrum. What is implied in both of these two approaches is the crucial dichotomy between value and fact, which in effect renders sterile the endeavour of addressing the challenges in the post-welfarist incarceration field and re-normalising it constructively. In order to overcome such shortcomings, we need an alternative method which is sufficiently normativity-sensitive and at the same time capable of achieving a more integral appreciation of the relationship between the factual and the normative than either the positivist or the normativist approaches.

In this regard, Durkheim's social-historical hermeneutics is particularly inspiring as it demonstrates the potential for advancing moral studies in a way which creatively bridges the factual and the normative, and it also proves to be much more normativity-sensitive than the positivist approaches. In the following paragraphs, we will consider how this methodological insight may be transformed to meet the particular needs of our own research project.

In the first place, it is vital to recognise the great contextual difference between Durkheim's moral science and our research into the contemporary imprisonment field. This means that in order to adequately fulfil our research purpose, the strategies we identified in interpreting Durkheim's works need to be modified in significant ways.

Durkheim's moral science aimed to preserve and protect the existing moral resources from being completely torn down by the radical rationalism of his time. The hermeneutics applied by him is thus mainly directed at revealing the realities of traditional moral resources, like those of revealed religions, with a view to re-expressing them in a rational language and incorporating them into the secular moral education scheme. Thus, for Durkheim, the first and most important thing is to

rescue what is still living and effective in traditional morality; then there comes the ‘new’ morality which develops on the basis of it and in the meantime reflects the needs of the changed social milieu. Moreover, the whole secular moral construction project is basically conceived of as a single-route development. For, within the perspective of Durkheim, what marked modern society was the realisation of a definite set of organisational principles and patterns of solidarity, thus the ‘truth’ of the societal reality is singular in nature, and so is its corresponding system of morality (despite the fact that it is still in the process of development).²⁸

In the contemporary imprisonment field, however, the situation is quite different from that of the ‘classic’ modern context. What troubles the normative spectrum is not a dominant orthodox system which requires rationalisation in order to regain its moral authority, but rather the tremendous diversity between multiple heterogeneous rationales, most of which have established their own sophisticated discourses and typical approaches towards generating normative imaginaries and claims. Under such circumstances, it is rather implausible to assume that there is a singular reality that can justify a unique rationale for guiding custodial practice. The first crucial task is then to address the plurality of such ‘realities’ regarding the normative performances of the contemporary imprisonment field.

On the other hand, we also have to face the *excess* of discourses and ways of rationalisation within the present custodial sphere. Whereas in Durkheim’s case, the objects of social-historical hermeneutics were norms that were previously under-rationalised but were still functional in the sense that they were ‘living’ in social praxis, the present imaginaries of imprisonment are characteristic of a variety of discourses regarding the purposes and desirable practical patterns of imprisonment. Furthermore, the excessive resources of these penal imaginaries and normative discourses are not always accurate or pertinent by virtue of reflecting the realities they address. Contrarily, they often possess a kind of *symbolic inadequacy* which

²⁸ To appreciate Durkheim’s notions about the linear development in the patterns of social organisation, we can look at his thesis on the division of labour in society (1964). As for the study of social norms, his analysis of homicide and property crime in *Professional Ethics and Civic Morals* (2003) gives examples showing that the path of the development of norms is primarily to be understood as a singular one.

marks their difference from the religious worldview which was targeted by Durkheim's moral science. In the latter case, the problematic facet refers to its inadequacy in meeting the requirements of rationalism (religious representations of morality are based on their own peculiar orthodox systems). But what is symbolised in them, within the perspective of Durkheim's moral science, is real and not an illusion. The challenge lies in how the reality that is symbolised in religious discourses can be made subject to the test of rationalism. As we can see from the preceding discussions, his social-historical hermeneutics aimed to meet this requirement by providing an alternative symbolic framework which is rational in character and which is also able to preserve and re-express the realities of the norms inherited from traditional normative resources to the targeted audience of secular moral education.

In the former case (contemporary imaginaries of imprisonment), however, it is rather questionable as to whether the discursive performances within the imprisonment field can be viewed as accommodating respective normative realities. Many of them (even the populist imaginaries) have been taking great pains to compile 'persuasive' discourses in order to gain recognition. This means they mostly tend to base their arguments on *reasoning* rather than on *command*. However, in advancing their specific reasonings, the strategies involved are far from unproblematic. It is very common to find in them the tactics of resorting to external 'politically correct' discourses, stereotypical notions, seemingly irrefutable instrumental logics, etc (numerous examples have been provided in the first chapter). In doing this, these contemporary imaginaries usually succeed in advocating certain coherent and 'rational' visions regarding the ideals of imprisonment, but they are nonetheless inclined to be self-referential and detached from those realities and perspectives that are contrary to them. As a result, it becomes uncertain as to whether the excessive discourses are in accordance with the normative realities in the custodial sphere or whether, instead, they distort the expression of such realities, hinder their adequate realisation and in effect impose a normative closure. (The examination of those imaginaries of imprisonment in Chapters 3, 4 & 5 will suggest that the latter situation is more often the case.)

Thus we face a paradox: the symbolic system of religions (particularly the primitive religions studied by Durkheim) may be *illusory* in their particular notions and ideas, but they nevertheless represent the moral realities of their societies and thus are *real* in that sense; in contrast, the contemporary imaginaries of imprisonment have abundant discursive resources, most of which are rationally organised, but they face tremendous difficulties in responding to the normative challenges within the field because they are mostly detached from the particular normative realities regarding the imprisonment complex. In this sense, the latter's symbolic structures and performances fail to fulfil their normative task and may be viewed as reflecting the pathology of *symbolic inadequacy*.

The contextual difference then poses a question to us: is social-historical hermeneutics also an effective approach in dealing with the latter case, that of the normative spectrum of the contemporary imprisonment complex?

The answer is yes, given that necessary modifications are made to it. As has been shown in the foregoing discussions, what distinguishes Durkheimian social-historical hermeneutics from positivist social studies is that it manages to expose the introspective dimension of the norms of the society in a way which bridges the gulf between grand social-historical understanding and the moral re-identification of individuals. It is at the same time a social-scientific enquiry and a process of moral education and reflexion. What makes this possible is its hermeneutic strength, which renders the audience's participation and moral reflexion an inherent part of the whole endeavour. What it accomplishes, then, is not merely an explanatory account of the moral phenomena from an external point of view, but an active revitalisation of the moral ideals *per se*.

However, the particular hermeneutic strength of this method is not necessarily tied up with Durkheim's project of moral secularisation. Firstly, it does not have to assume that there is a single truth in the social normative realm. Such an assumption primarily reflects the modern belief that there is an optimal direction for the progress

of civilisation (including its moral performance). But, even in Durkheim's age, this belief was hardly in accordance with social reality. Despite the fact that some of the dominant trends within the modern moral sphere could be identified (as Durkheim did in his social studies) they nonetheless formed merely part of the whole picture. The resources of norms in society are multiple and by no means confined to religions. For example, cultural theorists have demonstrated that the modern discourses have largely repressed the existence of varied unofficial discourses and sub-cultural representations which are at odds with the singular, hierarchical and single-direction reasoning which characterises modern rationality (Bakhtin, 1984). Under this perspective, if the hermeneutic studies of norms are only targeted at the dominant and official strands of discourses, they risk resulting in a partial and limited view of the whole spectrum which unavoidably and inherently involves diversity and plurality.

Secondly, the Durkheimian project of moral education assumes that the trajectory of modern moral development is relatively fixed and predictable, as the dominant trend of individualism and rationalism is being gradually realised. His social-historical hermeneutics is thus granted the task of revealing such evolving moral realities to the audience of moral education and facilitating the process of their becoming indispensable to the exercise of moral autonomy. However, the belief in this kind of determinism has also lost ground as grand theories have been considerably discredited. Now we are in a position to recognise that the moral development of society does not necessarily follow a pre-determined trajectory. Just as it is rooted in multiple resources of norms, so its 'future' can stretch in different directions. That is why Durkheim's moral education project, like many of the other overall modern schemes for transforming the inner nature of individuals, has eventually remained unfulfilled. The moral phenomena of society always contain an aspect of emergence and becoming; that means that the legitimate use of hermeneutics has to have an awareness of 'limits': it must always be prepared to be open to new living experiences and normative angles emerging from some previously unnoticed societal sectors. Accordingly, we can hardly envisage a fixed trajectory of moral evolution within society.

However, the hermeneutic element we have identified in Durkheim's works is less tightly linked to this singular and determinist vision of moral development than the positivist element is. For its most important purpose is not to give an objective explanation or prediction, but rather to expose the moral realities that are immanent in under-rationalised symbolic traditions (like revealed religions and a society's familial and sexual discourses) and make possible the individual's autonomous adherence to them. Indeed, in Durkheim's scheme, this is supposed to facilitate the accomplishment of his moral reconstruction project; and in many cases the hermeneutic approach does operate to endorse the author's standpoint in terms of a specific moral spectrum (e.g. its application has the result of defending the fundamental penal and family norms of modern society). But in its nature it is neither deductive nor determinist. What it exposes as the reality of social morality may be compelling enough for its audience to adopt a particular normative approach (as is illustrated in Durkheim's works), but the method itself does not presume or pre-determine any normative output, nor does it mean to impose a fixed choice on its audience. Instead, by displaying the introspective dimension of the social-moral phenomena, it enables its audience to approach the realities of what they normally perceive as externally binding and to re-discover the living life of morality that factually forms part of their selves. *Thus what the hermeneutics creates is not any pre-given normative outcome, but a reflexive sphere that makes authentic moral choices possible.*

Therefore, this social-historical hermeneutics may well serve normative enquiries in a different context which faces hugely pluralistic discourses and an uncertain future in terms of agreement on its normative ideals. This is the reason why such a methodological approach can greatly benefit our studies on the normative spectrum of the contemporary incarceration field in the UK. As has been described before, this field is characterised by the fragmentation of normative discourses and imaginaries, and it still lacks any prospects of paradigmatic integration. Such a situation generates great difficulties for traditional approaches in dealing with the normative facet of imprisonment. The hermeneutic approach, in contrast, may provide a useful tool to

carry out the task of uncovering and developing the normative performances in the field, which is comparable to Durkheim's moral science scheme in its aspiration to integrate social studies with the imminent need for normative re-construction.

However, in order to apply this approach appropriately to the subject matter of our studies, we need to fully recognise the significance of the idiosyncratic nature of the contemporary settings and make any necessary modifications according to that. In the following section, we will try to outline a methodological scheme which has been particularly designed for our research project.

iii. Our Methodological Scheme: Introspective Normativity and its Four Analytical-evaluative Patterns

Our methodological scheme can be described as one that is centred upon introspective normativity. In this section, we will seek to clarify its peculiar implications, the major materials to be dealt with, and its working rationale and strategies.

a. Hermeneutics centred on introspective normativity

As we showed earlier (Chapter 1), the decline of universal normativity has been characteristic of post-welfarist imprisonment in the UK, which means that the normative reality in this field is by no means the same as that which Durkheim's hermeneutics sought to tackle. In our case, we can no longer envisage that a singular normative reality, along with a monovocal form of rationalisation, is to be captured by the hermeneutic effort and held as the ubiquitous foundation for the practice and justification of confinement. However, this does not mean that to reflect upon the normative reality in today's context and strive for its transformation is pointless. To 'do the normative', in accordance with the aspirations of Durkheim's moral science, would be possible and meaningful for the contemporary custodial field, provided that

the focus of our hermeneutic undertaking shifts from universal normativity to introspective normativity. Whereas the former refers to the effort to establish (or re-establish) a singular and universalist paradigm for incarceration practice, the latter (introspective normativity) embraces the pluralistic realities within the normative spectrum and strives to revitalise and re-invent the categories, presumptions, ideas and mentalities underpinning the imprisonment complex and to make sure that the existing imaginaries and practical routines are never exempt from critical re-assessment from diverse and ever-renewing normative angles.

The methodological approach required to meet our purpose can acquire its essential rationale from Durkheim's social-historical hermeneutics, but some modification is necessary to serve the particular purpose of introspective normativity. We can start by considering the possible ways that a hermeneutic approach can understand the relationship between normative reality and its symbolic forms within a given context. For Durkheim's approach, the problem with the moral domain in the author's time was that its major symbolic forms (religions and orthodox traditions) no longer fitted the rise of rationalism and the modern development of moral reality which values individual autonomy. The unbalanced interrelationship between normative reality and its symbolic forms thus engenders the need for re-construction. Durkheim's social-historical hermeneutics can be viewed as a particular method of addressing this relational inadequacy through the process of moral education, which in effect recasts the under-rationalised moral reality in the hermeneutic light of the moral autonomy of modern individuals. It is worth noting that the re-invented balance between moral reality and its symbolic forms is not simply a discursive transmission that seeks to apply the 'right' symbolic forms to replace 'misleading' ones; it actually also results in the transformation of the moral reality per se: having incorporated the elements of rational reflexion and individual autonomy, the moral reality would become renewed and revitalised and would suit better the movement of modernisation. In short, this hermeneutics helps to forge a new morality for the society.

Returning to our study of post-welfarist imprisonment, we may likewise understand the problem of its normative performance as one of inadequacy in the relationship between the normative reality and its symbolic forms. In our case, the normative reality had better be identified as multiple ‘realities’, for they are characterised by plurality and they factually stimulate hugely diverse attitudes and dispositions concerning the exercise of carceral power. Meanwhile, their symbolic forms are also remarkably diversified compared with what was targeted by Durkheim’s project. Yet the situation of an unbalanced relationship between the normative realities and their symbolic forms still exists, though in a different pattern. Those symbolic forms – penal imaginaries and discourses about incarceration – involve varied types of reasoning and strategies of justification to buttress their respective penal ideals, but all of them have to face the crucial facet of the normative reality in the current custodial sphere: the decline of any universal normativity. As we have discussed earlier, none of those existing symbolic forms have yet demonstrated any competency to undertake the role which was played by penal welfarism – the last overarching symbolic paradigm guiding custodial practice. Therefore, it can be detected that there is continuous tension between the existing kinds of symbolic performance and their ability to accommodate the post-welfarist normative realities within the imprisonment field. From this perspective, to work towards an adequate and productive relationship between the normative realities and their symbolic forms is a significant way to confront the dilemmas in the contemporary incarceration realm.

However, at the heart of our task we do not have any universal normative reality which is to be rationally expressed, but instead the absence of it. This forms the essential attribute of the post-welfarist normative reality we have to face and it is the major difference between our methodological approach and Durkheim’s. For any hermeneutics which seeks to re-normalise the imprisonment field must address it pertinently. This means that its focus is not an attempt to restore universal normativity but to revitalise the performance of introspective normativity: this is an endeavour to explore the possibilities of those symbolic performances that are more appropriate to the normative realities of post-welfarist imprisonment and in the

meantime creatively promote their transformation. Under this methodological perspective, neither the normative realities nor their symbolic forms should be held as static or as bound by a fixed future (or trajectory of evolution); they are constantly open to reconfiguration. If the symbolic forms capture well the post-universalist normative realities (or at least certain aspects of them) and facilitate their revitalisation, we may judge that they demonstrate a good performance of introspective performance (we may also term this ‘normative innovation’); if instead they are alienated from the normative realities and hinder their transformation, we may term them bad performances of introspective normativity (we may also call this ‘penal nihilism’). In both these cases, the leading feature of the contemporary normative reality in the custodial field – the decline of universalism – should serve as a touchstone for such examination. (On that basis we can further clarify four distinctive patterns regarding the performance of introspective normativity, including *detachment*, *oblivion*, *confrontation* and *transformation*, which will be discussed shortly). Our hermeneutic effort starts then with an enquiry into the prominent symbolic forms within the imprisonment field, and it concentrates on uncovering and assessing their performances in this normative domain.

Despite the fact that our methodological scheme withdraws from grand normative constructions, it maintains an essential perspective from Durkheim’s social-historical hermeneutics: the integral approach to the factual and the normative. Just as Durkheim’s project is at the same time a clarification of the moral phenomena and a purposeful pursuit that is engaged in their improvement, our study of the symbolic performance of imprisonment is also an endeavour both to account for and to re-normalise the imaginaries of the incarceration complex in the UK.

b. Penal imaginaries as the materials to be examined

The above discussion also helps to make clear why our research makes penal imaginaries of imprisonment the main materials for examination. In the current imprisonment field within the UK, they constitute the major sources of the symbolic forms of the normative realities and they provide the concrete grounds for our

research. We will firstly clarify how we define the category of penal imaginaries in our research context and then explain in detail the strategies we will employ to examine each specific strand of the imaginaries of imprisonment in the UK.

Our perspective on penal imaginaries shares some key points with Charles Taylor's notion of 'social imaginaries' (2002). In Taylor's view, '[t]he social imaginary is not a set of ideas; rather it is what enables, through making sense of, the practices of a society' (2002: 91). And they are implied in 'the ways in which people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations.(2002: 106)' In his analyses of modern social imaginaries, the author seeks to uncover how the moral order, along with the corresponding political and economic framework of modern western societies, has been linked with and boosted by the prevalence of a particular cluster of such imaginaries, which were first theorised by intellectuals such as Locke and Grotius and then spread to the broader society and became its taken-for-granted self-understanding.

The penal imaginaries of imprisonment defined in our research scheme have three important facets. Two of them are in accordance with Taylor's conceptualisation of 'social imaginaries'. Firstly, they are not abstract ideas which can be separated from the domain of practice. By contrast, they are intertwined with the constitution and operation of concrete custodial regimes and should be understood as part of the reality of that sphere. Secondly, they contain both factual and normative elements. In them the understandings of the status quo of the current prison system are intimately connected with the perspectives on the purposes of incarceration and its role and significance for the broader society.²⁹

Apart from that, we need to stress a third point, that is, that penal imaginaries also include a dimension of introspective normative performance, which is responsible for

²⁹ In Taylor's terms, these social imaginaries are both factual and normative, for 'we have a sense of how things usually go, but this is interwoven with an idea of how they ought to go, of what missteps would invalidate the practice'(2002: 106).

symbolising the normative realities of the penal sphere to their targeted audiences. As we can see from the foregoing discussions, this dimension is where we hope to identify the dynamics of introspective normativity and seek to hermeneutically revitalise it. It is the introduction of this dimension that imposes more methodological requirements on our research subject than Taylor's study of 'social imaginaries' and many of the sociological studies of the ideological penological sphere (e.g. Carlen, ed, 2008).³⁰

In the following chapters, we will provide a detailed elaboration of some of the most representative imaginaries of imprisonment in the current UK society. Here it is helpful to outline some of the general research strategies we will use to carry out our investigation.

To start with, there is great disparity regarding the sources of imaginaries of imprisonment, and we need to adjust our approach to collecting them according to their respective strands. For example, the liberal imaginaries are involved in sources as diverse as academic journals, government documents, guidelines of custodial institutions, and so on. And, in order to examine them, we need to start our analysis based on those influential texts which are most indicative of the ways in which penal liberals imagine the current imprisonment complex. Populist imaginaries, on the other hand, have gained an audience mainly through the populist media and have their typical spokesmen ranging from 'prison works' politicians to (often but not always) victims' rights advocates and community safety campaigners. This disparity determines that the method of collecting these sources and identifying their

³⁰ Apart from Taylor's approach to 'social imaginaries', there is also another sociological perspective dealing with the 'sociological imagination', which is represented by the American sociologist C. Wright Mills in his influential book *The Sociological Imagination* (1959), and which has its echo in contemporary criminology (e.g. Young, 2011). Mills' approach instead focuses on the liberating potential of a proactively pursued, insight-oriented imagination which manages to relate the seemingly isolated frustrations in individual experiences to the grand structural aspects of social and political arrangements. As our study mainly treats imaginaries of imprisonment as a reality *sui generis* within the penal domain and takes them as existing materials for the introspective normativity analyses, it basically adopts Taylor's perspective. But as we will discuss in the final section of the chapter (especially regarding the 'transformation' pattern of introspective normativity), our research also has an inherent interest in exposing the possibilities of emancipation within the normative penal field. In this respect, it shares Mills' aspirations concerning what is to be achieved by the 'imagination'.

respective imaginaries is subject to adaptation in order to suit the study of each specific strand of them.

In spite of that, our approach to investigating those varied imaginaries involves some common perspectives and strategies which are outlined below.

c. Strategies for examining contemporary imaginaries of imprisonment

Unlike Durkheim's hermeneutics, which sought to uncover the moral reality in the symbolic guise of religions and traditional normative systems and to express and develop it within a rational framework, our approach needs to examine the contemporary forms of imaginaries about imprisonment and find how they are introspectively generated in relation to their particular visions of the normative realities in the field. On the basis of that approach, our interest is not in an attempt to 'rescue' or defend any substantive penological norms, but to hermeneutically expose whether their performances are effective in representing the normative realities within the field or whether instead they result in closure and detachment. Strategically, what we will target as the primary resources of our research will be a variety of strands of penal imaginaries instead of one single comprehensive symbolic-praxis system like primitive religions.

In the first place, those strands of penal imaginaries will not be treated as static aggregates of notions and ideas, but as living symbolic dynamics which take place in concrete social-historical settings. It is then important to link our subject-matter with the present conditions of prisons and their specific socio-political atmosphere. In Chapter 1, we have provided an overview of contemporary imprisonment in the UK and identified the critical factors that are associated with the landscape of penal imaginaries in this regard.

In the second place, our research needs to probe into the introspective construction of the normative realities in each strand of the penal imaginaries which embody very different approaches to imprisonment. For this purpose, we select three of the most

representative forms of penal imaginaries and examine how they develop their particular visions of the issues regarding imprisonment. They include the liberal, populist and risk-oriented imaginaries of imprisonment (we have already discussed how to identify and collect their sources). To facilitate the evaluation of their normative performance, we have identified four types of introspective dynamics, namely detachment, oblivion, confrontation and transformation (which will be discussed shortly).

It is worth noting that the selection of these three forms of penal imaginaries is not intended to be exhaustive. The same pattern of evaluation can and should be applied to other forms of imaginaries and discourses in this realm. But the examination conducted in Chapters 3 to 5 does provide a basis for constituting a more general view of the normative status quo of the imprisonment field, since they represent the three most typical approaches within it. Meanwhile, unlike Durkheim's goal of revealing a consensual ground and direction for the moral reconstruction project, our examination does not assume that there is a single pathway towards overcoming the predicament of the incarceration systems; it first of all tries to expose the pluralistic forms of normative construction and assesses what accounts for the effective forms of normative performance and innovation. In other words, it is concerned with the removal of the factors (social as well as discursive) which impede the authentic representation of moral realities in penal imaginaries and which cause normative closure. This will constitute the main task of Chapter 6.

Finally, based on the understanding of the critical condition of the decline in universal normativity, the investigations of our research need to go beyond those things which are positively represented in those imaginaries, and to deal with the dimension characterised by 'the lost' and 'the absent', namely the implications of the decline of universalism for contemporary normative pursuits within the imprisonment field. This particular requirement, together with that of acknowledging diversity and plurality, have then featured in our analytical approach and made it different from Durkheim's hermeneutics, which was primarily oriented towards a positive reconstruction of the moral domain. We can shed more light on this

methodological particularity by introducing a set of ideal types that will address four distinctive forms of the performance of introspective normativity in penal imaginaries.

d. Four analytical-evaluative patterns of introspective normativity

Those patterns are conceived as analytical-evaluative tools for examining the normative performance of the contemporary imaginaries of imprisonment in the UK. Each of them indicates an ideal type referring to how introspective normativity is realised in the face of the predicament of universalism in specific post-welfarist imaginaries of incarceration. To apply those categories resembles the use of a unique coordinate: on this basis we can unpack hermeneutically each strand of the penal imaginaries and illuminate how they manage to symbolise the post-universalist realities of imprisonment and thus jointly participate in the normative construction of this realm. In the meantime, those patterns also help us to diagnose the problematics within those forms of imaginaries if their performance of introspective normativity matches one (or more than one) of the four categories. As we will soon show, each of the patterns either indicates a pathological approach or, contrarily, an innovative one to the pursuit of normativity within the post-welfarist incarceration field. Thus, on the basis of that approach, we hope to receive guidance for the purpose of assessing each of the existing approaches in question to the imagining of imprisonment and, furthermore, the promotion of its re-normalisation.

The four analytic-evaluative patterns include detachment, oblivion, confrontation and transformation. Most of them are derived from the studies of the specific imaginaries of imprisonment that are carried out in the chapters which follow. This may cause the problem that to articulate the patterns in this chapter would appear to be very much in advance and hence rather abstract. Yet we can see it as a preliminary explanation, which will help us to clarify further our methodological framework and shed light on our studies of the different concrete imageries of imprisonment.

These patterns are all intimately associated with the *relative position* of the lost universal appeal within the normative constructions of penal imaginaries.

‘Detachment’ refers to the peculiar disposition of the penal imaginary to accept the fading of the universal ideal as a *fait accompli* and renounce any attempt to restore it. Penal imaginaries of the ‘detachment’ type may still engage in a variety of normative constructions which aim to guide custodial practice, but such constructions are mostly permeated by the crucial consciousness that they by no means lead to any ultimate justification of the system, but on the contrary are determined and conditioned by its very impossibility. Thus in fulfilling the normative end within the penal sphere, the focus of ‘detachment’ approaches is not a ‘substantive good’ to be pursued in penal reforms, but an avoidance of, or at least minimization of, the tangible evils engendered by the systems. Doing this, they may be characterised by different ‘temperaments’ – ranging from the nostalgic to the rationally realistic – but the normativity performed in them has the same kind of passive character: it endorses a detachment from any struggles for the ultimate ideal of legitimisable forms of carceral power and the orientation of understandings the concrete order of penal norms in accordance with this.

In the contemporary imprisonment field, we encounter many cases of penal imaginaries which resort to this pattern in their introspective normative constructions. For example, when contemporary penal liberals and reformists try to rescue some core values from the sinking welfarist prison scheme by bringing in the discourses of penal moderation, cultural re-identification and excess of penal consumption, we can detect this pattern being applied in those imaginaries to construct their normative appeals. In the following chapters we will have various chances to use it in dealing with a variety of specific forms of penal imaginaries.

‘Oblivion’ refers to the tendency of the penal imaginary to disregard altogether the besetting predicament of the loss of universal normativity from its agenda while pursuing its own definition of the ‘problems’ and practical ends within the custodial sphere. In this pattern, the issue of ultimate legitimization has been exiled to a state

of oblivion so that its normative burden no longer gets recognised. Usually, as the term ‘oblivion’ suggests, such exile is not intentionally performed within the relevant penal imaginaries. Instead, it occurs as a result of the devoted proactive pursuit of certain ‘goods’ that are determined and defined by those imaginaries. This can be the objective of minimising risks relating to prison release, or ‘community safety’, or conversely ‘human containment of prisoners’. The process of elaborating, developing and evaluating such specific goals seems to be able to form a self-sustaining circle which keeps running according to its own rationale and its own norms without being bothered by the dilemma of the loss of universal penological ideals. In our discussion of the ‘Kafka-like’ pursuit of prison reforms (in the introduction to Chapter 1), we can see a typical example of how imaginaries of imprisonment may involve the ‘oblivion’ pattern. In the following chapters we will also have the chance to see this in our investigation into more concrete forms of penal imaginaries.

The ‘confrontation’ pattern describes the ways in which the penal imaginary recognises the predicament of universal normativity and bears the crucial normative burden thus engendered. Firstly, ‘confrontation’ implies that there is sufficient consciousness of the normative challenge in the post-universalist context of the penal imaginary. In this situation it refuses to withdraw from it, and takes pains to confront all the imperfections and legitimacy deficiencies resulting from it. In many cases it can be seen to adopt the ‘gesture of denial’, that is, to expose and refute any false substitutes for the lost universal normativity, no matter how attractive they may appear in the current socio-political context. Through ‘denial’, the performance of confrontation retains and safeguards a space of authenticity within the normative spectrum before the role of universal penal paradigms is taken up competently by their qualified successors.

‘Transformation’, on the other hand, is used to indicate the penal imaginary’s successful unfolding of the emancipating possibilities of renewed and revitalised realities, and its triumph over the chronic tension between the legitimacy demand and the decline of universal normativity within the custodial sphere. In our perspective, a ‘transformation’ occurs when the performance of a penal imaginary symbolises and

vitalises the post-universalist penal realities in such a viable and illuminating way that the unfulfilled ‘desire for universalism’ ultimately fades into a more vibrant horizon of consciousnesses that confidently welcome openness, innovation, plurality and differences in mobilising the relocation of penal relations in society. By definition, it is not possible that ‘transformation’ will be realised solely within the domain of penal imaginaries; it implies the utter transformation of those social realities that underpin the custodial complex, for only in this situation can penal imageries be rendered the complete and adequate symbolic forms of the normative realities in the imprisonment field and meet the standard of an authentic ‘transformation’.

Therefore, it is more appropriate to apply the ‘transformation’ pattern to address the broad penal imaginary spectrum as a whole than a single specific strand of these imaginaries. In our study, it more often refers to that of becoming rather than what already exists. Yet it is meaningful to retain a place for this pattern, as it helps us to understand and appreciate many anti-conventional and anti-status quo imaginaries which, to greater or lesser degree, involve such potentialities in the custodial sphere as are indicated by the ‘transformation’ pattern.

The four patterns for examining the performance of introspective normativity also imply evaluative standards in themselves. The first two patterns – ‘detachment’ and ‘oblivion’ – are nihilistic forms of introspective normativity. Both of them, despite their varied approaches, withdraw from the normative burden engendered within the post-welfarist penal realm and engage in the imposition of normative closure, which in turn hinders the endeavour to re-normalise the field. For this reason, they can be termed forms of ‘handicapped normativity’; the hermeneutic effort to uncover them in concrete performances within penal imaginaries will then facilitate the normative revitalisation and reconstruction of the custodial realm.

The other two patterns - ‘confrontation’ and ‘transformation’ – represent the innovative forms of introspective normativity. They respond to the post-universalist predicament in authentic ways and reject the temptation of alienating it or imposing

any sort of normative closure. The hermeneutic exposure of their performance within the contemporary imaginaries of imprisonment also helps to promote the re-normalisation of this field in a positive and constructive direction.

The four patterns together constitute an analytical-evaluative perspective for our hermeneutic investigation into the penal imaginary sphere concerning the imprisonment complex within the UK. Based on them, we can understand better the normative performances of the different strands of imaginaries and diagnose their respective strengths, their pathologies as well as their potential for improvement. This undertaking, as we have tried to clarify in the earlier pages, thus hopes to shed light on the pathways to re-normalising the current imprisonment field and meeting the post-welfarist challenges it faces.

Here it is worth re-emphasizing the point which we made in discussing penal imaginaries as the materials to be examined. That is, we must treat the panel imaginaries as the particular post-welfarist realities within society rather than abstract conceptual systems detached from any given social settings. Thus the four analytical-evaluative patterns - and the introspective normativity investigation in general - are designed to apply to the dynamics of penal imaginaries in the concrete socio-political context of the contemporary UK. Moreover, as we will show in Chapter 6, in order to fully realise the potential of our hermeneutic approach, as a normative enterprise, it must have a self-conscious engagement with the struggles to promote the transformation of actual social relations.

At the end of this section, we are in a position to summarise some of the key points of our methodological scheme.

Our method is centred on the dynamics of introspective normativity, which we define as the particular performance of the penal imaginary to symbolise the post-universalist penal realities and to construct their respective normative visions of imprisonment. Based on this concept we develop an analytical-evaluative framework which is informed by distinctive ideal types of introspective normativity. In our

examination of concrete contemporary imaginaries of imprisonment, it serves as a source of theoretical guidance both for uncovering and for assessing their normative performances.

In an essential way, our research method follows the pathway of social-historical hermeneutics as has been identified in the interpretation of Durkheim's work. And in particular it adopts its holistic understanding of the relationship between *the factual* and *the normative*. On the other hand, our approach has its own characteristics due to its peculiar subject matter and its context of studies. It needs to firstly probe into multiple forms of imaginaries in the current imprisonment field and it faces the pluralist 'truths' and 'realities' implied in them. Secondly, it needs to examine the introspective dynamics of those different forms of imaginaries in terms of their adequacy in symbolising and normalising the post-welfarist realities of imprisonment. On the basis of this work, we will proceed to carry out a general assessment of the contemporary penal imaginary spectrum within the UK in the light of its performance of introspective normativity. By doing so, we will then seek to provide a basis for the re-normalisation of the incarceration field.

Chapter 3 Liberal Imaginaries of Imprisonment

I. Introduction

i. Three Representative Forms of Penal Imaginaries within the Imprisonment Field

In this chapter and the following two we will examine three representative forms of contemporary imaginaries of imprisonment within the perspective of introspective normativity. In the introduction part of Chapter 1, we have already undertaken a preliminary discussion of these and we identified them as the liberal, populist, and risk-oriented imaginaries of imprisonment. Before we set out to undertake our investigation, it would be helpful to undertake some clarification as to how these three forms of imaginaries have been selected as the major object of our enquiries and what role they are expected to play in the fulfilment of the research purpose of the thesis.

In the first place, it is important to be aware that to categorise penal imaginaries as ‘liberal’, ‘populist’ or ‘risk-oriented’ has the shortcoming of failing to capture the reality accurately, since the discursive boundaries of the field of incarceration are never clear-cut nor are they subject to any convenient labelling. Furthermore, the use of such general terms tends to create the false impression that each of the particular imaginaries is a coherent whole in itself and that it is exempt from tensions and contradictions engendered from within. As will become clear in the following examinations, the dynamics of penal imaginaries which are discussed under the same term (e.g. the ‘risk-oriented’ category) actually comprise quite diverse and non-homogeneous phenomena.

However, the essentialist way does not have to be the sole way of employing those terms. Instead, they can be used to analyse the penal imaginaries in a strategic way so that they can help us to map some of the distinctive aspects of the post-welfarist discursive realm. In this case, each of them refers to a certain strand of the penal imaginary by signifying a particular area of penal relations. For example, the liberal imaginaries are thus viewed as the symbolic representations and interactions which occur among those actors who are engaged in the enterprise of defending, reflecting and reviving the possibilities of shifting the current custodial practice on to a more liberal and restrictive, less reactive, basis. They do not necessarily imply that there should be a single discursive framework which is composed of hierarchical values and which can be captured by a general prescriptive theory of liberal prison schemes. Understood in this fashion, the three general forms of penal imaginaries play the role of a tentative guide to direct us within the territory of imprisonment without imposing any pre-given doctrines on our enquiries. And this is important for our research aims because, without a preliminary idea of the overall penal imaginary spectrum, it would hardly be feasible to comprehend any of the specific forms of contemporary imaginaries and their innovative facets.¹

However, as we cautioned earlier, it is important to recognise the limits of using general categories in our investigations. Each of them should be viewed as indicative rather than definitive: they are intended to outline the discursive spectrum of imprisonment only from an external point of view and are not meant to conceptualise it or place any pre-determined constraints on the in-depth scrutiny and analyses of it. Apart from that, the examination of the three representative penal imaginaries functions as a way to illustrate rather than exhaust the types of normative performance in the imprisonment field.

These three types of imaginaries are arguably not only representative of the most influential approaches to incarceration at the present time, but also are dynamically

¹ In this respect, to base the research on the study of strictly confined imaginary forms cannot pertinently serve the goal of uncovering the normative performance of the contemporary imaginaries of incarceration, for they tend to ignore important facets of it which are better captured in a grand theoretical perspective, and are amenable to the trap of 'abstracted empiricism' which is described by Jock Young (2011).

connected to the practices and outlooks of the major actors and audiences within the field. For example, the phenomena of an intensified fear of crime, a punitive reaction to and exclusion of prison inmates and ex-prisoners, and the politicisation of prison-related issues, bear a close relationship with the current 'populist' imaginaries of prison and prisoners, which provide all the images, slogans, stereotypes and justifications for them. On the other hand, the prevalence of risk calculation and risk management schemes in the 'modernising' of the custodial institutions is inseparable from the flourishing of 'risk-oriented' imaginaries within the field.² The three imaginaries together are then considered by us as capable of covering a substantive discursive territory within the current imprisonment complex; and to make them the major object of our inquiries has various advantages (compared with isolated studies of specific cases of penal imaginaries) in acquiring a general view of the normative performance within the field.

ii. About Liberal Imaginaries of Imprisonment

As our overview in Chapter 1 indicates, the objective-definition and policy-making process of incarceration in the UK have been under growing pressure from populist politics and have been swayed in the direction of exclusion and incapacitation rather than inclusion and integration over the past few decades. Under such circumstances, it is also notable that the role of the liberal elites has diminished considerably within the policy-making spectrum compared with the heyday of penal welfarism (Loader, 2006; Loader and Sparks 2010; Garland, 2001a). Nonetheless, among academics and practitioners within the custodial field, the 'liberal' approach to comprehending and evaluating prison issues maintains a strong, if not overwhelmingly prevalent, presence and to a great extent assumes the status of 'political correctness'. This is reflected in the fact that in contrast with the punitive tone of the tabloid papers and 'prison works' politicians, the majority of academic journals, publications and conferences have been continuously distancing their views from the populist stand and have been re-expressing the core principles of liberal penalology: legal

² Further discussion of the social linkages of the populist and risk oriented imaginaries will be given in Chapter 4 and Chapter 5 respectively.

restrictions on the state power to impose incarceration, proportionality, respect for the dignity and basic human rights of prisoners, and social re-integration. Upon this basis, along with other public forums (prison inspectors' reports, broadsheet newspapers, expert-chaired broadcasting programmes, and so on) which share a similar line of opinion, we can identify a prolific cluster of sources of current liberal imaginaries of imprisonment in this country.

It is noteworthy though that these 'liberal' viewpoints are by no means homogeneous or uniform with regard to particular issues. By contrast, they involve marked differentiation in terms of specific attitudes and opinions. But to talk about 'liberal penal imaginaries' in collective terms nevertheless makes sense if we are attempting to address some peculiar manners and dispositions in understanding and generating discourses about the practices and corresponding social dynamics of incarceration. In the context of the UK it is not a difficult task to identify some major characteristics of the liberal penal approach: it is basically opposed to the excessive and punitive use of penal measures, in particular imprisonment, it finds itself uneasy with the enticing tone of the media coverage of crime and punishment issues and with retributive language and sentiments in general, favours the traditional virtue of due procedure and proportionality, embraces the dignity and fundamental rights of individuals (especially those who are vulnerable to the coercive forces of incarceration institutions) and has affinity with the 'social' understandings of crime problems and the positive aspirations of the operation of prisons, such as the improvement and rehabilitation of the inmates (despite the fact that they are not as popular as they used to be), etc. And if we have a look at the major academic journals and publications, it is also not hard to identify a rough contour of liberal approaches towards tackling the contemporary challenges within the field of British prisons.³

³ For example, one of the leading criminology journals in the UK published a special edition in 2010, in which we can see how a diverse array of academic undertakings participated in the joint endeavour of defending and reflecting on the opportunities in the age of financial crisis to bring changes to the sphere of penal practices and mentalities and to restore the liberal penal virtues like parsimony and moderation (*Theoretical Criminology*, 2010: 14 (3)). We will examine this in more detail in the next section of the chapter.

It is also important to realise that the liberal penal imaginaries are far from static. When taking into account the historical dimensions of their representative forms, we can readily recognise that instead of being defined by any concrete patterns of ideas and values that are ‘inherently liberal’, this peculiar commitment of liberal penal imaginaries usually develops its substantive content in interaction with the specific historical environment and with rival forms of penal values and ideas. For instance, in the time of John Howard, the major line of liberal penal thoughts was concerned with the inhuman jail conditions and the arbitrariness involved in criminal justice procedures and their unjust intrusion into the civil societal order. And what it sought to confront and resist was the notions and patterns of practices inherited from the medieval regimes of penality, some elements of which were still supported by the conservatives at John Howard’s time. However, the focus of liberal penal ideas altered significantly in the late 19th century and especially the early 20th century, when penal liberals in England were embracing a positive vision of imprisonment. The aim of systematically reforming and rehabilitating offenders was placed at the centre of a liberal incarceration scheme. What the penal liberals of the ‘positive era’ had to oppose was not only the old-fashioned penological attitude of making prison a ‘less eligible’ place where wrong-doers are literally ‘punished’, but also the legal traditionalists who held there was a vital ‘free will’, a ‘culpability’ in criminal behaviour, and who advocated the strict application of retributivist and proportionality principles in the delivery of prison sentences. Notably, it was the latter, whose views had resonated well with those of the liberal reformers of the previous decades, who played the part of ‘anti-liberal’ bigots and obsolete opponents of reforms.⁴ Therefore, if we want to identify the liberal imaginaries of imprisonment as a viable part of the social realities, it would be counterproductive to seek to theorise them within a single logical framework. This also accounts for the diversity in their performances in terms of introspective normativity, which we will analyse individually in later paragraphs.

⁴ See the review article of David Scott (2007) and also see Tonry (2001a) and Sullivan (2000).

iii. Contents of the Chapter

In the substantive part of this chapter, we will investigate how the contemporary liberal imaginaries perform, especially in relation to the normative predicament within the post-welfarist context, and we will examine their normative performance from the analytical-evaluative angle of introspective normativity. Firstly, we will give an overview of the current circumstances of liberal imaginaries of imprisonment and will shed light on how their characteristics in the present day context might be understood. The major part of the chapter tries to uncover four distinctive approaches to normative construction which are implied in the multiple contemporary forms of liberal imaginaries of imprisonment and to assess their performance in the light of introspective normativity. They include the exterior normativity approach, the limits acknowledgement approach, the penal consumption approach and the culture identity approach. On the basis of our investigation of each of them, we aim to illustrate both the innovative and the nihilistic aspects of the normative construction implied in the contemporary liberal imaginaries, and to shed light on their potential for pursuing normative innovation within the imprisonment field.

II. Overview

i. Liberal Imprisonment Agendas in the Post-Welfarist Phase

Since the 1970s, when the ‘nothing works’ attack marked the decline of the rehabilitative ideal, the liberal prison scheme has been subject to immense doubt and has had to face the competition of dystopian pragmatic approaches as well as populist suppressive proposals. Against this background, the liberal consensus on prison issues was considerably blurred, until a major prison reform agenda was drawn up on the basis of a public inquiry into the causes of a series of severe prison riots and disturbances in the early 1990s.

The inmates' occupation of Manchester's Strangeways Prison in April 1990 marked the beginning of this series of prison disturbance events, which caused grave physical injuries to inmates and prison staff, as well as serious damages to some of the accommodation. They also quickly became one of those high-profile events that received massive media attention. The Home Office then appointed Lord Justice Woolf to carry out an independent inquiry into the causes of these events. His report, published in 1991, revealed that the conditions in prisons had deteriorated to an intolerable degree and recommended a whole package of reform proposals.⁵ The Woolf recommendations were directly associated with the goal of preventing similar riots in the future; meanwhile, they implied an in-depth redefinition of the purposes of prisons and the key rationales in fulfilling them. Once the report was published, it won widespread recognition and praise among the society of legal professionals and academics and was taken as the best example of thoughtful liberal prison reform agendas (Morgan, 1992 and Sparks et al., 1996). Although the implementation of Woolf's recommendations was recognised to be problematic in the practical sectors and many of them even got dismissed in the punitive political climate of the time (Liebling, 2006), they succeeded in delineating certain grounds of consensus for the post-1970s liberal penal thinking and stimulated the formation of a new emphasis in prison studies. The issues of justice and legitimacy thus received increasing attention within the public discourses and academic publications with regard to comprehending the prison system (e.g. Sparks et al., 1996; Sparks and Bottoms, 1995; Liebling, 2004).

Woolf's recommendations in their entirety are quite wide-ranging and comprehensive, and it is only possible here to identify some of the key points which have had a remarkable influence on the liberal imprisonment agendas thereafter. Firstly, there is 'one principal thread' which draws together all the proposals and recommendations: the requirement for the prison service to set security, control and justice at the right level and to provide the right balance between them (Home Office, 1991a: 17). In Woolf's perspective, the three elements of 'security', 'control' and 'justice' are equally important, and the prison service's excessive emphasis on

⁵ See Home Office (1991a). For more information about the riots, see Jameson and Allison (1995) and Carrabine (2004).

security, leading to inappropriate control measures, resulted in its failure to give sufficient consideration to 'justice', which is of great significance for explaining the cause of the prison riots. 'Justice' in Woolf's recommendations implies the obligation on the part of the prison service to treat prisoners with 'humanity and fairness'; it also means due process in decision making and consistency between prison policies and the whole criminal justice system. To guarantee the right level of justice is also considered to be vital for the maintenance of 'security' and 'control' within prisons.

What is particularly noteworthy in Woolf's recommendations is that the concept of 'justice' is associated with the idea of a 'compact' or 'contract'. In Woolf's view, a prison term should be served in a way such that each prisoner can set out his/her expectations and responsibilities, whereas 'improved standards of justice' within prisons involve 'the giving of reasons to a prisoner for any decision which materially and adversely affects him'. Specifically, the prison service should make clear from the beginning of the term what the prison expects to provide for each prisoner and what it requires from him/her in return. This 'contract' might be determined in discussion with individual prisoners and it can be altered according to his/her progress through the prison sentence (Home Office, 1991a: 23).

The impact of Woolf's recommendations has gone much further, beyond the sphere of prison riots research; they are widely viewed as representative of the contemporary liberal responses to the problems of imprisonment. Some of their underlying rationales have largely acquired the status of 'common knowledge' in the preceding liberal prison reform agendas. The 'contract' perspective, for example, has penetrated into a variety of prison management sectors and has become widespread in imagining the relationships within prisons. The dimension of 'justice' within prisons has also received widespread attention in prison researches. It is not only examined in relation to the maintenance of order within prisons, but it is increasingly acknowledged as an imperative and independent element in understanding the normative foundations of the incarceration institutions. Since the publication of Woolf's report, several important academic works have been produced which imply

further exploration of the ideas implied in it. They include the extended examination of the issues of legitimisation and their relation to the order in prisons (Sparks et al., 1996; Sparks and Bottoms, 1995).

Whereas the decency agenda can be viewed as reflecting the liberal vision of imprisonment which is mainly the products of the liberal penal elites and external observers and critics, it may not be an accurate depiction of the practice in actual prisons. How the penal practice has been shaped by liberalism is quite a different case from designing and negotiating a set of guiding principles and criteria. As Alison Liebling (2004) observes, a significant factor causing the liberal project to have gone wrong in the post-Woolf period was that its important concepts like 'justice', 'liberal' and 'care' failed to achieve sufficient clarity when they had to be communicated to those working and managing prisons and to apply in the daily penal practice. In this respect, Liebling's work (2011, 2004 & 1999) provides in-depth analyses of how the actual practice in prisons is shaped by liberal values and in what way their performance can be measured accordingly. In the paragraphs below we will have a closer review of her study on the 'moral performance' of prisons and discuss how it may extend further the boundaries of contemporary liberal penal imaginaries.

Liebling's framework of her prison study is based on the understanding that prisons are 'special moral places'. That means, what matters in prisons cannot be measured simply through the lens of managerial efficacy and outcome, but should be identified in terms of 'values': values which are essentially 'interpersonal and civic' (Liebling, 2004: 454). To clarify those values in the prison context and to measure the performance of specific prisons on the basis of them has formed the primary goal of her prison studies, which employ a set of research strategies that together constitute the framework of prisons' 'moral performance'. The key dimensions of 'moral performance' in prisons were identified by Liebling and her research team on the basis of investigating what is perceived by prison staff and inmates as important to the prison experiences. They were summarised as 'relationship dimensions', 'regime dimensions', 'social structure dimensions' plus two individual items ('meaning',

‘quality of life’). Those dimensions consist of a number of delicately defined items including ‘respect’, ‘trust’, ‘humanity’, ‘relationships’, ‘support’, ‘fairness’, ‘well-being’, ‘personal development’, ‘family contact’, ‘decency’ and so forth. The measurement of each of these in the environment of specific prisons (which is based on a score system processing the feedback of prisoners and prison staff responding to questionnaires and interviews) is then used to present the overall picture of their moral performance and to reveal the variation of such performance among different incarceration institutions. As Liebling’s study shows, the prisons which score low are also more likely to relate with empirical factors (i.e. high rates of prisoner suicide and self-inflicted harms) signifying that they are less survivable than those with higher score in their moral performance (2004 & 2011).

The framework of ‘moral performance’ then helps to present the liberal value of imprisonment in concrete and measureable forms within the context of mundane prison life. In effect it carries out the task of proving that the ‘humane and decent’ treatment in prison can be conceptualised and subjected to measurement and comparison. By doing so it also accomplishes a more in-depth articulation of ‘what matters’ in the liberal imaginary of prisons. In this respect, it provides more sophisticated guidance than a generalised ‘decency agenda’ for the policy makers and researchers to understand and advance reformations in line with the values which are vital to the performance of the prison. Moreover, it sheds light on the possibility of investigating how empirical evidence in prison experience may help to clarify a number of critical terms related to liberal penological perspective (such terms include ‘dignity’, ‘respect’, ‘care’, ‘fairness’, ‘meaning’, ‘personal development’, etc.) as they are in practice. Such findings are also considered to be meaningful for addressing the broader penological principles set by the European Court of Human Rights, such as ‘inhuman and degrading treatment’ (Liebling, 2011).

ii. Penal Moderation Proposal

One of the most prominent aspects of the contemporary liberal imaginaries of imprisonment is that they have to face a crucial political climate which turns a

cynical face to penal experts' opinions and which makes imprisonment a highly politicised issue. Thus to address the punitive penal response and politicisation of prison problems has become a vital task for contemporary advocates of liberal approaches to imprisonment. In this regard, there has been a wide array of academic work following the development of liberal penal thoughts. Under present circumstances, such undertakings are represented by the aspiration for a revived penal moderation philosophy.

The penal moderation proposal was treated as the central topic of a special edition of the journal *Theoretical Criminology* in 2010. The contributors to the edition employed diverse theoretical angles to explore the possibilities for a broad spectrum of penal practices designed to shift towards 'other qualities, such as restraint, minimalism, moderation, maybe even mercy' (Bosworth, 2010a: 252). The intensified financial crisis of the time and the government's willingness to reduce public expenditure are considered as providing a worthy opportunity for promoting such values within the penal realms. The moderation proposal is targeted at a broad range of penal measures, but the use of imprisonment apparently forms one of its primary concerns. To make prisons less central to the current penal system and to discredit the notion that prison can solve the problem of crime is a shared goal of the advocates of the penal moderation proposal. In essence, it envisages a criminal justice system which 'does less' rather than advocating new purposes for it. In the perspective of Ian Loader, penal moderation as a public philosophy of punishment should comprise the elements of restraint, parsimony and dignity. In the first place, a sense of restraint is considered as necessary in the ways of delivering penalty and generating discourses about it. This requirement is related to the task of penal moderation to bring the particular moral ambivalence of punishment – which is often reflected in the conflicting emotional states associated with penal dynamics - into the public discursive sphere and to make it a vital aspect of the endeavour to fight against the tangible 'penal enthusiasm' evident at the present time. Parsimony is related to the awareness of the 'tragic' nature of penal institutions – it is wise not to invest too much in them in terms of positive social ends, for they are a rather infertile apparatus to achieve such ends. In this case, parsimony is put forward as being in

accordance with the particular consciousness of the limits of penal institutions and a 'Treasury mindset' favouring reducing its unnecessary use. Apart from that, penal moderation requires that the penal systems should treat all those brought under their control with human dignity and should guarantee the basic human rights of those involved (Loader, 2010).

Penal moderation is viewed as a realistic option for the current British prison systems and other criminal justice sectors to adopt, as the in-depth criticisms of penal excess and popular punitivism over the past few decades and the changed economic circumstances have prepared the necessary conditions for its gathering strength. But, for its advocates, what is still needed for its realisation is a 'secure political platform, coherent ideological articulation and institutional embeddedness' (Bosworth, 2010a: 255).

iii. Liberal Imaginaries of Imprisonment and Universal Normativity

The limited space available in the chapter does not allow us to extend our investigation to include every representation of contemporary liberal imaginaries of imprisonment. The Woolf prison reform agendas and the penal moderation proposal that we have discussed above, however, are able to demonstrate some of the prominent characteristics of the current liberal approaches to imprisonment. In the first place, it is notable that they implicitly or explicitly involve a shift away from the attachment to any universal penological ideology. The moderation proposal is based on the recognition of the limits of penal measures and it shrinks from the identification of any positive purposes for them. The Woolf report and the prison reform agendas which adopt its stands are also inclined to construct the notions of 'justice' and 'legitimacy' in ways which are detached from any essentialist belief systems. As a matter of fact, such notions are restrictively defined and are not meant to constitute a holistic ideology for custodial practice.

In this respect, they differ greatly from the traditional liberal paradigms within the penal welfarist phase or the earlier prison reform era. In those cases, the liberal

imaginaries of imprisonment had a significant linkage with the vibrant modern aspiration for universal normativity. This means that the faith in a desired vision of the future, or in an ideal state of society, is an indispensable element of the normative structure underpinning those liberal penal imaginaries. In spite of the divergence in the standpoints regarding what elements the ‘ideal society’ should contain and how they might be implemented effectively, those imaginaries normally implied a longing for completeness and for the ultimate good. This aspect was vital to the normative construction of those liberal penal imaginaries, as all the specific prescriptions they made were underpinned and given life by allegiance to the universal ideals to which they aspired. In contrast, what characterises the challenges faced by the contemporary penal liberals is the decline in the faith and the horizon of any convincing form of universal normativity. This inherent lack of any ‘normative future’ has significant implications for the effort to build some sustainable ground for legitimising the practices of incarceration and directing reforms towards improving them.

In this particular context, the liberal values and visions of imprisonment may be embraced by people in those societal circles who share the corresponding presumptions and narratives (particularly liberal academics and their audiences), but for those who do not (e.g. many tabloid journalists and their audiences, ‘underclass’ youth, victims of serious crime and their relatives, in certain cases), it is questionable how the validity of liberal claims can be established. This difficulty per se suggests that the contemporary liberal imaginaries have to face a challenge within the normative realm which may be more profound than the material crisis within the prison institutions.

Therefore, it is crucial to inquire how the contemporary liberal imaginaries are able to succeed in providing a valid normative construction without the support of traditional universal ideals. This will lead to the examination of their performance in relation to the introspective normativity approach, whose methodological principles we have discussed at length in Chapter 2.

The following investigation will uncover some of the more in-depth mechanisms of liberal imaginaries in their attempt to achieve their respective normative visions under contemporary circumstances. On this basis, we will be able to scrutinize how the performances of introspective normativity are conducted within them and also to shed light on their innovative potential for confronting the predicaments within the contemporary imprisonment field.

III. Four Approaches to Normative Construction in the Contemporary Liberal Imaginaries of Imprisonment

As the preceding discussion indicates, the contemporary liberal imaginaries of imprisonment face the challenge of defending the validity of their normative claims in the post-welfarist conditions, in which the conventional universalist ideology previously employed for championing the liberal prison regime is no longer viable. Against this background, we can detect a number of strategies adopted by advocates of liberal prison agendas on various occasions which imply different forms of normative construction. What makes them distinct is that they seek to detach the normative question of incarceration from holistic penal ideologies. Some of these strategies are not entirely novel within the lineage of liberal penal thinking, yet their potential for displaying innovative types of performance of introspective normativity have become particularly noteworthy while the prospects of universal normativity are declining within the imprisonment sphere.

Below we will discuss four such approaches and examine whether they are capable of playing the role of effective normative construction for liberal penal thinking in the post-welfarist imprisonment field. Although the four approaches are not meant to exhaust all the existing forms of normative performance of the liberal imaginaries, they can be considered as quite representative in a contemporary context. Our work in investigating in them can hopefully also give us some insights about the possibilities of further normative innovations concerning the performance of liberal approaches to incarceration.

i. The Exterior Normativity Approach

This approach is related to the phenomenon that among the advocates of liberal prison schemes there is a notable inclination to rely upon certain established discursive value-systems to bear the burden of normative argument. Some of the value-systems that are most often resorted to include human rights, international treaties and conventions, and the jurisdictions of the European Court of Human Rights (ECtHR) (e.g. van Zyl Smit and Snacken, 2009; Snacken, 2010; Livingstone, 2000 and Coyle, 2002).

As those value-systems are well recognised at the international or European level, they can easily serve as the ‘normative guarantee’ for the penal policies or rationales which have suffered from the attenuation of the validity of their possible ideological foundations, provided that meaningful correlations can be shown to exist between them. The effort to establish such a correlation is evident in some of the representative forms of the liberal imaginaries of imprisonment.

For example, the liberal stand which acknowledges prisoners’ rights (particularly the right to vote) is traditionally associated with the universalist vision of individuals (including prisoners) as agents who own moral autonomy and take responsibility for the decisions made by their independent will.⁶ However, this underlying philosophical assumption enjoys little allegiance in the present political milieu, which is permeated with law and order discourses and the ‘us/them’ dichotomy used to represent the images of prisoners. Under such circumstances, the rulings of the ECtHR are thought to constitute an authoritative source for buttressing the liberal approaches to protecting prisoners’ rights. Van Zyl Smit and Snacken (2009), for example, advance an interpretation of the decisions of ECtHR, the reports of the Committee for the Prevention of Torture (CPT) and the European Prison Rules (EPR) and, based on that, they put forward a regulatory framework which solidly embraces the recognition of prisoners’ rights that are guaranteed by the European Convention

⁶ For more discussion about the ‘liberal subject’ and its implications for modern penalty, see Brown (2005).

on Human Rights (ECHR). In this perspective, the ECtHR decision delivered in the Golder case in 1975 settled the principle that detention should not imply any ‘inherent limitation’ to the human rights of prisoners, which was re-affirmed in the European Prison Rules of 1987.⁷ As the judicial decisions made at the EU level and the human rights value-system that underpins them possess a relatively uncontroversial status within the normative-discursive spectrum, they provide a much needed ground for the liberal proposals on prison schemes (like the protection of prisoners’ rights) to depend upon. Yet, in this case, what matters most is the apparent immunity of those established value-systems from serious opposition and criticism within the public forum: this very quality is what determines the success of the strategy in question in fulfilling its normative construction. It is not concerned, however, with what peculiar normative realities are associated with those value-systems and how they might be linked to the imprisonment field in some inherent way. In other words, what is involved in this approach is merely a kind of ‘exterior normativity’: insofar as the value-systems it resorts to are held (exteriorly) to be valid, they are considered to be capable of undertaking the role which the traditional universalist liberal ideal had previously played.

Such a strategy of normative construction is also operational within those penal imaginaries which seek to pursue a more systematic representation of the connection between the exterior value-system and liberal penal approaches. Snacken (2010), for instance, tried to develop a framework with a view to transforming the empirical findings about the correlation between differed levels of ‘punitiveness’ and emphasis on value-systems such as democracy, dignity and human rights across European societies into normative arguments for the reduction of penal excess. In her account, the relationship between the constrained use of punishment and a high level of welfare, a strong emphasis on democracy and human rights can be established as an empirical fact, and this finding, in turn, strengthens the normative argument that a moderate approach to penalty should be favoured if ‘those fundamental values cherished by many Europeans’ are to be defended (Snacken, 2010: 287). In this

⁷ Golder v. United Kingdom, 1975, 1 EHRR 524. Similarly, the European Prison Rules of 1987 stipulate that deprivation of freedom itself is sufficient punishment and no other deprivations, pains or restrictions should be imposed on prisoners. See Van Zyl Smit and Snacken (2009: 360).

perspective, the status of the exterior value sources as the ‘sponsor’ of normativity for the penal imagination is also evident, though the two spheres are placed within a more integral network of meanings than that which the single-direction interpretation of ECtHR decisions or human rights discourse achieves in the former case.

It is noteworthy that the sources of this ‘exterior normativity’ are quite diverse and invocation of them may occur on a variety of occasions. In fact, in our review of the methodological approach of sociology of punishment (Chapter 2, II.ii), we also uncovered the tendency of sociological studies of imprisonment to resort to certain ‘commonly’ acknowledged abstract values, like democracy and civic freedom, in order to give their undertakings a normative anchor.

The exterior normativity approach identified above does not imply that there is no intrinsic connection between those exterior value systems and the substantive content of the traditional liberal penological vision. It is feasible to elaborate, for example, how the human rights system or ideas of democracy imply the fundamental elements of the liberal visions of the ends of incarceration regimes. However, the defining character of the exterior normativity approach is the particular way in which liberal imaginaries benefit from the apparent ‘politically correct’ status of those value-systems rather than the effort to explore possibilities of the re-normalisation of the liberal imprisonment ideal on its own account. As a result, this strategy requires that the normative performance of such penal imaginaries is contained within a trajectory circumscribed by orthodox discourses and it has rather limited chances of getting inspiration and achieving self-reflection through encountering and acknowledging ‘the unsettled puzzles’ within the present custodial regime as well as the multiple divergent ways of presenting their normative significance. Thus in terms of their performance in introspective normativity, it represents a static type and becomes detached from the dimension of normative innovation based on in-depth self-reflection and open-ended interaction with heterogeneous dynamics and perspectives within the imprisonment field.

The problem of the exterior normativity approach can then be described as one that imposes normative closure on the liberal imaginaries of imprisonment. Whereas the popular profile of the value-systems it resorts to does help it to shun some of the oppositional reactions from the public audience, such an adherence also results in a non-reflexive way of presenting the normative reality of the contemporary imprisonment field. Considering the challenge of the decline of universal normativity in the post-welfarist context, the exterior normativity approach does not own sufficient normative strength to recognise and confront it properly; it actually excludes it from its agenda. In this respect, it represents a counterproductive form of normative performance.

ii. The 'Limits' Acknowledgement Approach

This approach is related to the idea and perception that the time for penal optimism is gone and that the liberal penological assumption that the prison system can be designed and operated in ways that would benefit the well-being of individual inmates and serve the best interests of the whole society is no longer sustainable. In this case, the particular sense of the 'limits' of incarceration as a means of punishment can also participate in the performance of introspective normativity in favour of the liberal penological approaches: since the exercise of custodial power is represented as intrinsically 'tragic', and as being hopeless for achieving meaningful social ends in a definite and undamaging manner, the liberal stand that supports the approach of penal moderation and prudence then gains credit. In other words, the 'limits' acknowledgement approach reconstructs the liberal normative vision in a way that emphasises the impotence and the limitations of the positive use of prisons. Unlike the exterior normativity approach, the predicament of the sphere of normative performance in the imprisonment field instead gets acknowledged and serves as the very basis for advancing the liberal penological virtues of moderation against the background of current custodial practices in the UK.

The penal imaginary which makes the 'limits' of penal measures the central part of its understanding about them can be traced back to the Durkheimian theory of the

social function of punishment. Within Durkheim's (1964) perspective, the key function of penalty is to maintain the moral order of society by confirming to its members the condemnable nature of deviancies. In other words, the extinction of all crimes is never the reachable goal for the 'normal' function of the penal system; on the contrary, the continuous exposure and enforcement of penal responses to crimes and deviancies are indispensable to it. Thus apart from their moral-symbolic role, the penal measures are thought to involve intrinsic limits in realising the positive goals of deterring the occurrence of offences and making society a crime-free world. The idea of 'limits' has also been elaborated in numerous empirical researches, particularly with regard to the practice of incarceration. Many of them support the view that deprivation of freedom per se inevitably entails serious damages to the inmates' well-being and cannot be an effective way of achieving their rehabilitation and the prevention of future crimes, no matter how thoughtfully or 'decently' its institutional practice is organised (Sykes, 1958; Crewe, 2011; Cohen and Taylor, 1972).

Whereas the Durkheimian theory of punishment presents such 'limits' mainly as objective sociological findings, they tend to have particular normative bearings on the contemporary liberal imaginaries of imprisonment. In the latter case, the disenchanted recognition of what prisons cannot achieve paves the way for the justification of the self-conscious restricting of the use of prisons. In the same way, it can serve as the cognitive grounds for defying the populist penal discourses which invest excessive social expectations in the prison system and tend to ignore the restrictions on penal power that form the major concern of traditional liberal penological thinking.

Ian Loader's elaboration of this penal moderation philosophy has offered a typical example in this regard. He identifies penal moderation as an approach which focuses 'on the limits rather than the purposes of punishment' (2010: 355) and it 'recalls and works with the well-documented fact that the prison is a perennially failing social apparatus about which it is wise never to be sanguine, or to invest much hope' (2010: 354). Under such a perspective, the sense of restraints should be prior to any

acknowledgement of positive penal ideologies, no matter whether they seek to reform or to achieve proportionally delivered justice, and it is important that the public learns to accept and embrace a vision of restricted penal scope and scale. If this stance is accepted, some key liberal penological appeals centred on the idea of constraining the use of penalty will be rescued from the apparently indeterminate ideological debates and controversies within the post-welfarist context. Even though they are not derived from any kind of ontological assertion, under the 'limits' acknowledgement perspective they can be justifiably taken as the most appropriate principles for responding to the current circumstances within the penal field.

It can be noted that this approach addresses the difficulties and complexities in the penal ideological realm in a way which is more sophisticated than the exterior normativity approach. The distinctive characteristic of this approach is that in its normative construction it does not take as necessary the adherence to any overarching penal ideology or exterior value-system; instead, the core contents of its normative implications are closely connected with its deliberately maintained distance from any such discursive frameworks as attaching positive values and ends to penal interventions. It also acknowledges the paradoxical aspect of penal phenomena in drawing out their normative implications, as it agrees that '[p]unishment—for a penal moderate—is an occasion for, and source of, sorrow and regret: it does and should make us feel uncomfortable' (Braithwaite and Pettit, 1989: 6, quoted in Loader, 2010: 353). Thus the place which the 'moderation' imaginaries have reached is not built upon affirmative normative realities or external dogmas, but instead is built on a deeply 'fluid' basis which consists of uncertain and paradoxical experiences.

Compared with the exterior normativity approach, the 'limits' acknowledgement approach rejects the 'oblivion' response to the predicament of universal normativity; and it provides a different way of establishing its normative claims. Its normative performance has a passive character: its particular advice to the imprisonment practice is not derived from any conviction as to the universal 'good' achievable through the penal institutions, but from profound doubt about its feasibility. In this

perspective, the only way to make sense of the decline of universal normativity within the imprisonment field is to live with its inherently imperfect circumstances and minimise its negative impact on civil society and the individuals at stake.

Yet this ‘withdrawal’ type of normative performance also places a particular sort of normative closure on the penal imaginaries based on it. This is related to the way in which it constructs and makes sense of the ‘tragic dimension’ of penalty. The idea of ‘limits’ often implies a fixed way of representing the turbulent and abnormal nature of penalty and, broadly, the sphere of crime, violence and social pathologies, in which they are presented as the opposite of the regular civil social order and as inherently different from it. As for the ‘limits’ acknowledgement imaginaries, this bitter aspect of penal phenomena is beyond any complete cure, and is only subject to realistic management which aims at possible control and reduction of this aspect. However, the more weight is placed on the necessity of including an awareness of the ‘limits’ of penalty (to bring the abnormal back to the normal), the more fully confirmed is the dualistic assumption about the opposition between ‘normal’ civic society and the ‘abnormal’ penal realm. This somehow severs the connection between the two domains and presents the former as something unwelcome, unfamiliar and threatening to normal social life. In principle it reflects the orientation of the mainstream, ‘law-abiding’ social sectors towards the ‘dark’ institutions of incarceration. When the positivist ideal of prison reform has fallen into disrepute, for them the ‘limits’ acknowledgement approach appears to represent an acceptable compromise and an alternative to purely administrative penological constructions. But for the social sectors who are regularly exposed to the turbulent environment of ‘captive society’ or prevalent criminal victimisation, the compromising nature of its normative construction would remain particularly exasperating, as it amounts to a consolidation of the normative status of the experiences related to them and a denial of any possible contribution to the transformation of the extant normative order of the incarceration complex. In this regard, the problem of the fading of universal normativity can hardly be remedied by the ‘limits’ acknowledge approach.

Furthermore, it also places constraints on the potential for normative innovation, which can occur only when the boundaries of such settled social realms are challenged and reshaped. As far as the dualistic vision of the normative status of the normal social order and the captive world is maintained, the former would possess a status which appears to be distanced from the upheavals implied in the latter and thus serves as the standard for penal thinking. Such a separation puts a closure on the effort to reassess the normativity of the former and to take the tragic side of the latter as being part of the whole society rather than as an autonomous aspect of imprisonment per se. Thus, for the task of revitalising the normative performance of imaginaries of imprisonment, it is important that this boundary-fixing effect be realised and overcome.

iii. The Cultural Identity Approach

This particular approach is premised on the separate system of incarceration in the UK, which we discussed in the overview section of Chapter 1. Under this system, the custodial institutions in Scotland and Northern Ireland are separate from those in England and Wales and are not subject to the administration of the HM Prison Service. Instead, their prison policies are determined and implemented mainly at the local level and under the impact of local politics and the cultural self-understanding of the decision makers. It is against this background that the particular ‘cultural identity approach’ is considered by us as being active in the normative construction of liberal visions of imprisonment.

Let us take the prison reform trajectory in Scotland, for example. As early as the era prior to Scottish devolution, it can be noted that it has been entangled with the important local political movement to promote a national identity which is ‘other-to-England’. As Lesley McAra (2005, 2008) has documented, whereas the penal policies in England and Wales were turning in a punitive direction, the criminal justice system in Scotland maintained the continuity of its welfarist commitments until the 1990s. Such a ‘resistance’ was closely connected with the relatively autonomous status of the elite networks of penal decision-makers in Scotland, which had formed

the custom of pursuing separate policies which were tailored to suit a distinctively Scottish context, particularly its peculiar civic culture that values cooperation, inclusion and the welfare of the young and the vulnerable. The rise of Scottish identity politics and the devolved modes of governance, on the other hand, have prepared the conditions for this civic culture to continue to thrive and for nurturing a keener self-consciousness of this culture within the policy-making sphere.⁸

This peculiar ‘cultural identity’ also plays a role within the discursive spectrum of the championing of the liberal approach to imprisonment. While there is ever diminishing ontological ground for buttressing liberal claims within the contemporary imprisonment field, this shared cultural identity seems to be able to provide an anchor for the conservation of this approach. In this regard, the excluding and illiberal attributes of incarceration practice are conceived as a ‘rotten source’ which inevitably undermines the cultural self-understanding and solidarity of the community. The prevention of this from happening thus forms a task with particular political appeal to those who no longer find the regular rationales underpinning the liberal penal measures convincing. And this task would appear to be especially urgent in a condition where such ‘cultural identity’ is perceived to be vulnerable and worthy of meticulous protection. Yet, as we will see shortly, it is not merely employed by those with the aim of defending an ‘other-to-England’ cultural identity, but also influences penal thinking with regard to the English prison system per se, as criminologists are induced to consider the possibility of revising the dominant political ethos and the cultural self-understanding within England which encourages penal expansion.

We can see a typical representation of the cultural identity approach, for example, in the governmental documents in Scotland which involve an elaboration of ways of comprehending prison issues. The influential report of the Scottish Prisons Commission, which was published in 2008, purported to link the reformatory future of the prison system with Scotland’s choice of a global identity: whether to follow the example of its neighbour in the south (England) which is ‘engaged in the most

⁸ See more discussion in McAra (2005).

significant expansion of its penal system', or conversely, to follow the neighbours in the north (the Scandinavian countries) where 'high levels of social equality and welfare go hand in hand with low imprisonment rates' (Scottish Prisons Commission, 2008: 10). The report determines that the prison system in Scotland should choose a 'distinctively Scottish path' which 'builds on local practices and institutions while looking to the best practices from abroad', so that it can be made into an 'international model' (ibid: 10). Accordingly, prison policies should be adjusted to suit this particular self-understanding of Scotland's cultural characteristics: the illiberal features of the incarceration system then need to be removed on the basis that they apparently undermine the deliberate construction and preservation of such an identity. In this regard, should the population detained in Scottish prisons reach a level markedly higher than that in Norway (or the other countries with which Scotland culturally identifies itself), that should be held to be a warning signal that the expectations related to the nation's self-image have been ill met.⁹

A similar logic also underlay the decision made by the Scottish prison authorities to grant compassionate release to Abdelbaset Ali Mohmed Al-Megrahi, the prisoner who was convicted of the Lockerbie bombing. Among the reasons given by the Cabinet Secretary for Justice Kenny MacAskill, the self-identification of Scotland and the Scottish people as the embracers of 'justice, humanity, mercy' stands out as the major justifying ground: '[i]n Scotland, we are a people who pride ourselves on our humanity. It is viewed as a defining characteristic of Scotland and the Scottish people. The perpetration of an atrocity and outrage cannot and should not be a basis for losing sight of who we are, the values we seek to uphold, and the faith and beliefs by which we seek to live.... Compassion and mercy are about upholding the beliefs that we seek to live by, remaining true to our values as a people. No matter the severity of the provocation or the atrocity perpetrated.'¹⁰ In those discourses, the normative validity of liberal penal values is somehow disconnected from their

⁹ In the words of Kenny MacAskill (the Cabinet Secretary for Justice): '[t]he Government refuses to believe that the Scottish people are inherently bad or that there is any genetic reason why we should be locking up twice as many offenders as Ireland or Norway' (Scottish Prisons Commission: 10).

¹⁰ See, 'Decisions on the applications for prisoner transfer and compassionate release in relation to Abdelbaset Ali Mohmed Al-Megrahi', 20th August, 2009.
<http://www.scotland.gov.uk/News/Speeches/Speeches/Safer-and-stronger/lockerbidecision> (visited 27/03/ 2013).

universal adequacy in handling questions relating to prisons and prisoners, but instead gets established by the act of confirming a particular cultural disposition and temperament as representing the defining attributes of ‘a people’. The latter is essentially a matter of collective choices and it does not pertain to any of the types of ontological necessity that prescribe the liberal incarceration schemes. Thus the cultural identity approach has the effect of relieving the tension engendered by the decline of universal normativity, and makes a virtue-based community value-system the major bearer of the normative burden which the universal penal ideology used to carry.

Notably, such an effect of normative performance also inspired the ways of imagining the reformatory future of penal systems which inhabit cultural settings distinct from their Scottish counterparts. In those cases, the cultural identity approach may work in ways which either advocate the desirability of shifting the extant, comparatively disreputable, penal culture to a better-recognised one or else call for the restoration of the old civic virtues which used to feature in the ad hoc political culture but which tend to be forgotten in the punitive context. For example, the traditionally-accepted image of England as a ‘tolerant, forgiving, decent and pragmatic’ land and the collective self-understanding based on that image are resorted to as a cultural referent for nurturing a ‘penal moderation’ turn (Loader, 2010: 354). In fact such a strategy is also employed to address the political culture in the US, one which is widely perceived as adversary to those civic cultural attributes, on the basis that such a comparative approach would establish a recommendable direction for altering the political ethos relating to its imprisonment practice.¹¹

Under the scrutiny of the introspective normativity approach, the cultural identity approach has much in common with the exterior normativity approach identified earlier. The discussion above indicates that ‘cultural identity’ per se serves as a sort of external normative standard for enabling a consensus among the addressed community members regarding the way of delivering sentences and running prisons. In doing so, it somehow manages to evade the normative burden which liberal

¹¹ And in this case the example of Scottish civic culture is viewed as an appealing model for Americans to follow. See Simon (2010a: 268).

penology used to carry in the form of a universal penal ideal. As far as the liberal image of a particular nation or community maintains its popularity among its addressees, the cultural identity approach has the grounds to convince them that liberal penal values are also desirable despite the post-universalist predicament. But unlike the exterior normativity approach which resorts to certain doctrinal systems which are assumed to be orthodox and prescriptive, it is in its nature *conditional*. Instead of presenting its normative claims as being equivalent to categorical imperatives, it implies that *choice*, although performed collectively, plays a significant part in constituting the normative basis of the penal system. Thus there is a peculiar communicative element in this approach which creates the innovative potential for its normative performance to be distinct from the exterior normative approach. In the case where ‘cultural identity’ is constructed as a fixed trajectory which admits a singular set of principles for directing the prison regimes, its normative performance is analogous to that of the exterior normativity approach: it is one which leaves the predicament of universal normativity in oblivion and which results in normative closure in presenting the imaginary vision of imprisonment. However, should the ‘cultural identity’ be given the dynamic meaning of purposeful negotiations, reflections and choices being performed through a public forum, it would also bring the communicative and deliberative constituents into the normative realm of imprisonment and create opportunities for the problematic nature and the challenges within it to be better addressed before an interactive public. This might be expected to lead to a more innovative and constructive future for the normative performance of liberal imaginaries of imprisonment.

In this regard, the current forms of the ‘cultural identity’ approach, as we see in the Scottish case, are still in need of further development in order to realise such innovative potentials in normative performance.

iv. The Penal Consumption Approach

As studies on the phenomena of consumerism have flourished and exerted immense impact on the contemporary sociological enterprise, they have also lent new

conceptual tools to criminologists who seek to locate the dynamics of imprisonment within the setting of consumer society and unpack their meanings from the angle of consumerist studies (Vaughan, 2002; McCulloch and McNeill, 2007; Loader, 1999 & 2009; Simon, 2010a & 2010b; Goold et al., 2010).

Their work has not only given rise to a rich array of sociological findings regarding the relationship between the rise of consumer society and the current penal-political atmosphere, the role of the consumer mindset in the expansion of incarceration and the distinctive characteristics as well as the problematics relating to the spread of the ‘penal consumption’ phenomenon, but also introduced a peculiar critical perspective for addressing the normative facets of penal performance, particularly of the institutional practice of incarceration. The latter aspect of the penal consumption literature, as we will show shortly, presents a unique approach to the normative performance of liberal imaginaries of imprisonment.

Certainly it is beyond the scope of the present section to undertake a comprehensive review of the literature in the field but, before we start to examine the penal consumption approach as a means of normative construction, it will be helpful to sketch some key findings of these consumerist studies which constitute its knowledge background. They can be viewed as consisting of two distinctive sets of research undertakings. One embarks on exposing the sociological consequences of the advent of consumerist society in the sphere of penal practice. A typical example in this regard is Vaughan’s (2002) study of the punitive consequences of consumer culture, which applies René Girard’s scapegoating theory to explain how the rise of consumer society has undermined the traditional desire-containing social mechanisms and has exacerbated the anxiety felt by individuals in the society, which eventually fuels the scapegoating mechanism that induces increasingly punitive reactions to the socially marginalised and excluded.¹² The other set of studies, in contrast, is concerned with how penal practice per se might be structured by the consumerist logic and become the proper object itself of analysis in terms of a

¹² Also see Bauman’s (1997 & 2002) analyses of the status of the ‘underclass’ in post-modern conditions as ‘flawed customers’ who have lost the safeguards of the welfarist state and have instead become subject to intensified penal measures as an alternative form of social control.

consumerist perspective. In this case, the demands for safety and for harsher prison terms in reaction to crime is treated as analogous to the appetite for food and housing – whose excessive nature is characteristic of the contemporary consumer culture (Loader, 2009; Simon, 2010a & 2010b). Similarly, the ‘insecure public’ are conceived as the primary consumer of the prison service (McCulloch and McNeill, 2007). Within this perspective, the ‘excess’ of imprisonment, police and private security measures can be analysed in the light of consumption behaviour, albeit of a unique type. The existing research in this field has already offered rich and intriguing explanations of the sociological attributes of the penal consumption dynamics and identified various worrying consequences of its further development, particularly with regard to its negative effects on the prospects of having these prison issues subjected to democratic deliberation and decision-making rather than market regulation (McCulloch and McNeill, 2007; Loader, 1999 & 2009).

In an attempt to advance the sociological understanding of ‘penal consumption’, the latter type of research also indicates a new possibility of dealing with the normative questions of incarceration. In the consumption-oriented imaginary, the conventional moral categories for addressing prison related issues such as retribution, individual culpability and responsibility, correction, justice and integration tend to be replaced by new, often metaphorical, categories based on the relationship of consumption. The latter (consumption prudence, consumer rationality, ‘diet balance’, over-consumption, etc) have the effect of transforming the solemnity of the traditional morality-laden terminology into the apparent acceptability of the mundane wisdom that is normally praised in prudent consumer choices. Accordingly, some of the key liberal penological claims – restriction on custodial usage, the need to curb the demand for excessive penal measures and to promote parsimony and moderation in the current political atmosphere – can be re-established on a particular basis which does not necessarily require support from any essentialist theories or ideologies. So long as the criticisms of ‘bad’ consumer decisions are accepted as valid, the penal consumption approach can provide a reference framework which can buttress the liberal prison scheme which is viewed as having considerable affinity with the consumer prudence standards.

A typical example of this approach is the tendency to issue ‘health warnings’ about the dangers of overconsumption. As the demand of security is treated as akin to other consumer cravings, the results of consumption excess (the soaring number of prison inmates) are also treated as comparable to the morbid consequences that people have to bear when they yield to the temptation of unregulated consumption of other goods (ice-cream, pizzas, SUVs, housing, and so on): obesity, physical or financial breakdown. They thus serve as the basis for urging a reassessment of the status quo of the prison systems and advocating a more restrained approach to the ‘consumption’ of incarceration (e.g. Loader, 2009 and Simon, 2010a). This may be viewed as a paradigm shift in the representation of the normative reality of imprisonment. Yet is it able to carry out the task of ensuring effective normative performance for the liberal penal imaginaries in response to the post-universalist predicament in the imprisonment field? If we take it as an overall normative scheme, there will be noteworthy limitations in its performance of introspective normativity. First of all, it is questionable to what extent the ‘consumption’ metaphor reflects the comprehensive penal relationships involved in incarceration practice. After all, the current ‘illiberal’ attributes of imprisonment involve multiple possibilities of interpretation and the consumption approach has to prove its superiority over other ways of defining their normative implications. Notably, the consumption approach is highly selective in presenting the normative statuses and hierarchies of the factors related to the imprisonment dynamics. The severity of custodial sentencing as a penal measure, along with the normative burden to justify it, receives little recognition and is removed from the centre of its imaginary. In this respect, it is in a weak position to defend the validity of its normative vision based on the consumption interpretation against the alternative approaches, for example, the ‘limits’ acknowledge approach which we analysed earlier. When the penal consumption approach functions as a tactic for constructing a specific one-dimensional normative understanding of imprisonment (and for rejecting the alternative normative understandings), it can hardly be expected to achieve a more convincing outcome than other post-welfarist approaches to normative performance.

However, the penal consumption approach also contains an insight which reaches beyond the essentialist horizon of normative construction. Whereas the metaphorical use of the idea of ‘consumption prudence’ may not serve as an adequate foundation upon which a systemic liberal prison scheme can be built, it manifests considerable innovative potential to challenge the conventional framework of penological thinking and to inspire alternative approaches to presenting the normative reality in the imprisonment field. One of its most revealing undertakings is to expose the fact that similar ‘self-control’ patterns exist across the boundaries of other social sectors, but they tend to be constructed differently depending on the social positions of the actors. As Ian Loader (2009) has analysed, for individuals from the urban ‘underclass’, lack of ‘self-control’ is often identified as the cause of their criminality and most of the prison correctional programmes contain elements which take the restoration of a proper level of self-control as the premise of prisoners’ reintegration into society, whereas a similar lack of ‘self-control’ also characterises middle class members’ consumption habits and the whole of society’s excessive appetite for security. The consumption metaphor in this case then works in a critical way to question the established normative order within the penal sphere; it does not necessarily envisage an integral normative scheme to replace the old one, but it has the effect of overturning the routine structure of the dominant normative understanding and eliciting different angles for its possible reconstruction.

Therefore, the penal consumption approach can be considered as an limited form of normative performance when it seeks to endorse the liberal imprisonment scheme by advancing a metaphorical ‘health warnings’ strategy; but its insightful deconstruction of conventional penal relations provides an inspiring source for potential normative innovation and the revitalisation of the penal imaginaries of incarceration.

IV. Discussion

The preceding investigation shows that there is a rich body of resources for liberal imaginaries which involve diverse kinds of introspective normative construction in

the face of the predicament of the decline of universal normativity in the post-welfarist imprisonment field. The four approaches we have analysed above certainly do not exhaust all the individual types of normative performance within the contemporary liberal penal imaginaries, but they do provide us with empirical grounds on the basis of which we will be able to capture and examine some of the representative aspects of the current liberal imaginaries with regard to their performance in terms of introspective normativity.

Whereas all the four approaches that we have investigated aim to enhance the validity of certain key liberal penological claims within the current context (especially with regard to the curbing of the punitive and excessive use of custodial sentences and the advocating of a more moderate and more restrictive approach towards it), the characteristics and effects of their performances in relation to introspective normativity are not identical. Some of them can be seen to involve important limitations in relation to such performances and to meeting the challenge related to the decline of universal normativity. The exterior normativity approach largely ignores the crucial status of the decline of universal normativity and tries to establish the validity of liberal penological claims on certain exterior value-systems. Though this approach has the effect of transmitting the burden of normative argument to the realm of established discourses which benefit from a large degree of public support, it pays the price of imposing closure on the effort to explore the pluralistic aspects of the imprisonment complex and making them the very source for normative innovation. Its performance in terms of introspective normativity can thus be described by the term ‘oblivion’ as we defined it in Chapter 2. In terms of its normative performance it has a nihilistic counterproductive effect. The cultural identity approach implies the same problem of normative closure, when the cultural identity is taken as another form of exterior normativity. By contrast, the ‘limits’ acknowledgement approach implies a reflexive space for acknowledgement of the lack of universal ideals in the imprisonment field, yet it engages in a different type of normative closure through the creation of a dualistic vision which assumes that the essence of penalty is bound to be alien to the civic social order and external to the reach of normalisation.

On the other hand, our examination of the cultural identity approach and penal consumption approach demonstrates that they involve innovative elements of normative performance which are inspiring for the task of confronting the predicament of the decline of universal normativity within the imprisonment field. Such possibilities are related to the strategies of the two approaches which include analytical angles which creatively revitalise the conventional pattern of normative construction and which are open to further development and innovative interaction with divergent perspectives.

For the task of re-normalising the performance of liberal imaginaries so that they can properly meet the challenges within the post-welfarist imprisonment field, it is important to recognise this tendency of imposing closure in some of these contemporary approaches to normative construction, and to expose its counterproductive effect on the pursuit of normative innovation. Meanwhile, the innovative possibilities of these liberal penal imaginaries need to be detected and given sufficient space for further development. It is on that basis that more comprehensive ways of revitalising the liberal imaginary spectrum can be realised within the incarceration field.

Chapter 4 Populist Imaginaries of Imprisonment

I. Introduction

In Chapter 1 we have had a preliminary discussion about the ‘populist’ discourses in the penal realm and their impact on the contemporary imaginaries and practices of imprisonment. And it is in the particular political climate charged with ‘law and order’ rhetoric, the ever-growing public appetite for security and ‘tough’ measures to combat crime and tabloid images of criminals and victims that the advocates of liberal prison agendas have tried to develop several innovative strategies to preserve and reaffirm the validity of their key values such as penal moderation and a guarantee of the basic human rights of prisoners.¹

Despite their constant resort to ‘healthy instincts’ or ‘gut feelings’, the populist approaches also observably seek to gain credit by more sophisticated means of expression - they can be as numerical as public opinion polls or as vivid as popular films and fictions describing prison life. As a matter of fact, nowadays we live in a world which does not only resound with those straightforward ‘prison works’ slogans, but is also permeated by images, narratives, stories and theories which in effect tend to justify and reinforce the existing tendencies of public reactions to prison-related issues. In this situation, it will be a meaningful endeavour for us to investigate how certain types of populist penal imaginaries may also intervene and participate in the configuration of the post-welfarist normative landscapes within the imprisonment field, in a way that is comparable to the case of liberal imaginaries.

The existing research concerning the rise of populist forces within the penal sphere has mostly focused on the social and political backdrop which nurtured and facilitated it, or has sought to make clear the multiple consequences it has had for the

¹ The relevant content is in Chapter 1 (I.i.c & II.vi.d) and Chapter 3 (III).

criminal justice systems and broader aspects of social life (civic liberty, justice, gender and ethnical relations, etc) (Pratt, 2000b, 2000c & 2009; Pratt et al., 2005; Garland 1996 & 2001a, Bottoms, 1995). Yet the dynamics of its performance in terms of introspective normativity, as it is implied in those diversified forms of populist imaginaries and representations, has received little attention. This may be explained by the fact that, in the eyes of many analysts, the substantive part of populist imaginaries is nothing but a repetition of shallow clichés, which are boorish and dubious at best, misleading and harmful at worst. To treat it seriously features the activities of politicians who are eager to please their electorate, whereas as far as academic inquiry is concerned it would be difficult and inappropriate to tackle it in this way. For example, how could an academic researcher *reason with* the advocates of ‘an eye for an eye’ punishment in its literal sense? For researchers in this field, the common response is to avoid any direct normative debate with these populist claims, and instead to focus on neutral analysis of why and how such sorts of imaginaries have attained their dominion within the contemporary penal political spectrum.

Along with this neutralising strategy there often comes the implied distinction between two particular moral universes – the ‘intuitive’ and reactionary on the one hand, and the ‘rational’ and ‘informed’ on the other. In a way this resonates with the dichotomy that distinguishes professional knowledge from laymen’s opinions, which was a familiar one under the traditional penal welfarist regime. Whereas the latter dichotomy has become a major target of criticism and suspicion since the paradigm of rehabilitation – one of the most representative products of penal expertise – was viewed to have failed to achieve its goals, to mainstream academic thinking the unequal value-statuses of ‘rational’ and ‘reactionary’ opinions seem to be endemic and they are largely immune from any serious challenge.

It can be noted that the distinction between these two different categories of discourses on prisons is partly due to the fixed methodological establishment, which is disposed, on the one hand, to engage in normative dialogue with discourses which are rationally organised and which are thus considered to be arguable, communicable and negotiable, and on the other, to employ a ‘neutral’ and analytical manner of

dealing with those ‘expressive’ forms of penal discourse, focusing mainly on questions of ‘what’ and ‘why’. Consequently, it tends to create a particular rank of relative ‘normative worthiness’ among different discursive representations of penal issues.

What is related to this methodological disparity is the commonly shared belief in rationalism and humanitarianism among academics. Against this background, the populist views and representations about imprisonment can easily be perceived as alien or heterogeneous, which in turn reinforces the boundary between the two categories of penal imaginaries. Any effort to reconcile them is doomed to fail: it is a matter of an ‘either or’ decision rather than mutual comprehension. From this perspective, most forms of ‘populist’ imaginaries of imprisonment are beyond the reach of rational dialogue and merely constitute a domain to be tamed and manipulated so that they can accord with a ‘well-informed’ understanding of penal matters.

However, in the contemporary context of the UK, the strategy based on this hierarchical value-order (which tends to play down the normative validity of populist discourses) faces intense difficulties, both pragmatically and conceptually. On the one hand, the current political and cultural ethos is observed to be increasingly in favour of expressive judgement and stand-taking regarding issues of prisons and prisoners, and resistant to dispassionate and deliberative approaches. Under such circumstances, the particular ‘value-order’ of different sources of penal imaginaries tends to be reversed once it is estimated to be external to the academic circles and their ‘informed’ audience groups – for example, in the forums of the tabloid media or electoral political debates. In those settings, the very quality of delicate and reflexive reasoning tends to weaken, rather than enhance, the palatability of their proposals. In contrast, the simplified, ‘straightforward’ and enticing languages are more likely to succeed in attracting audiences and gaining their support, insofar as they appear to resonate well with ‘common’ people’s apparent concerns and dispositions and manage to remove the elitist flavour from their rhetorics (Pratt, 2007 and Sussman, 2002).

On the other hand, the difficulty in the ‘rational versus reactionary’ dichotomy is also related to the circumstances of universal normativity within the imprisonment field. In the previous chapter, we have already touched on this particular predicament in our examination of the liberal imaginaries. As our discussion has shown, the contemporary liberal approaches to imprisonment have to incorporate a variety of strategies in order to realise their performances in terms of introspective normativity, so that the validity of their claims can be established in the absence of their traditional ideological support. In this regard, the rational way of organising penal discourses does not automatically engender the normative credibility of their ideas, particularly as far as the audiences of those heterogeneous ‘imagined communities’ are concerned. Accordingly, the ground becomes weaker for granting a higher value-status to the rationally organised penal discourses than to their ‘intuitive’ populist rivals, unless they are proven to be successful within the realm of introspective normativity.

Therefore, the ‘rational vs reactionary’ dichotomy with its value assumptions – which tend to underlie many of the studies of the populist discourses on imprisonment today – needs to be re-examined. There are no inherent reasons to uphold the judgement that the ‘populist’ imaginaries are doomed to be inferior to those more rational and ‘thoughtful’ patterns. They may, as we will discuss in the later part of this chapter, involve some unique characteristics which are meaningful for the enterprise of re-vitalising the normative performances of imaginaries of imprisonment. Compared with the case of liberal imaginaries, they in some respects are in more direct touch with the sentiments and concerns of the ordinary members of the public and they provide a peculiar channel for their expression and also a potential for inspiring a more democratically justifiable approach to addressing the imprisonment predicament under contemporary conditions.

However, to take ‘populist’ imaginaries seriously does not mean that their stands and viewpoints should be accepted in a way that renders them ‘equally’ sound and respectable to any other claims within the penological field. It is crucial to have their

normative performance examined to assess whether they succeed in fulfilling the claims of normative construction in vibrant and productive ways. In this case, the analytic-evaluative perspective of introspective normativity can help us to shed light on the performance of populist imaginaries regarding prison issues. If they are shown to fail in the task of fulfilling the standard of defensible normative performance, this may also help us to consider what particular aspects of the contemporary populist imaginaries can be related to such a failure and how they might be changed to enable a more fruitful form of the imaginary of imprisonment to be constructed.

In the main body of this chapter, we will first provide an overview of the representative types of populist imaginaries of imprisonment in the context of contemporary British society. Then we will shed sociological light on the phenomenon of the rise of populist discourses by introducing some important items in the criminological literature on this territory. Following that, we will deal with the question concerning how these populist imaginaries can be treated as the object of analyses based on introspective normativity. Through the examination of the specific forms of their normative performance, we will discuss in the conclusion the aspect of these populist imaginaries which is viewed by us as being a form of ‘handicapped normativity’ and the possibility of remedying this and realising the innovative potential within the populist discursive spectrum.

II. Overview

i. Sources and Dynamics

When we try to identify the sources of ‘populist’ imaginaries of imprisonment, we immediately notice that they are highly diversified, as there are myriads of representations of the ‘public voices’ saying what prison is and should be. There are not only the speeches of political figures which pledge to re-establish the ‘balance in the criminal justice system’, whose present form is condemned for being ‘in favour

of criminals and against protection of the public',² but also numerous magazines and newspapers which strive to offer provocative descriptions of the latest incidents of prisoner escapes or crimes committed by ex-prisoners or prisoners on parole. Apart from that, various individual bloggers, community representatives and victim rights groups also speak out loud about what they think about prisoners' right to vote, 'laxity' behind bars or certain novel policies implemented in the prisons.³ Thus it is a rather difficult task to identify what is the authoritative body in generating such populist views of imprisonment and what constitutes the 'standard' account of them. In this respect, they are very different from the liberal imaginaries which we examined in the previous chapter. In the latter case, despite the internal differentiation among opinions and theories, we are able to identify a few concrete groups (academics, penal professionals and policy-makers clinging to liberal traditions) who are the main body who contribute to the multiple forms of liberal imaginaries about imprisonment and who seek via various different strategies to defend the particular normative vision implied within them. Apart from that, it is also relatively easy to identify the discursive carriers of liberal penal imaginaries – their mainstream sources often come from academic journals, books, symposiums and other forms of publication such as official reports of target-setting and the assessment results of custodial institutions. Thus to delineate the boundaries of the liberal imaginaries of imprisonment is less problematic than the populist ones. To set the latter as an object of inquiry, we need in the first place to clarify what the populist imaginaries of imprison are about and ask who is responsible for their mobilization? The answers to these questions are not apparent at a first glance.

More importantly, as we will show later, the populist penal imaginaries are closely connected with the peculiar social dynamics that are usually studied under the heading of 'moral panics' or 'penal populism'. It is often observed that outbursts of populist claims and attitudes are directly stimulated by the occurrence of certain

² See Michael Howard's speech, which was reported by Colin Brown of *The Independent*, 07 October 1993.

³ One of these examples is offered by Sparks (2007a: 75). He described how the programme of installing satellite TV in prison cells stimulated massive negative comments from the mass media, which found it deeply unacceptable that prisoners are allowed to watch TV in their cells at a price even cheaper than NHS patients.

specific events (e.g. a prison riot, or a hideous offence committed by a prisoner on parole) and the corresponding media involvement in it. On those occasions, it would be counterproductive for theoretical enquiries to separate the contents of populist penal imaginaries from the social settings that have nurtured them and the social consequences engendered by them. Thus, for the purpose of identifying ‘populist’ penal imaginaries and examining their normative performances, it is not sufficient to confine the study of them to their external discursive layers. We will also need to identify the populist forms of penal imaginaries in those typical social dynamics which are crucial to their generation and dissemination.

In the following paragraphs, we will adopt a two-step analytical strategy to provide an overview of the phenomena of populist imaginaries of imprisonment in the UK. Firstly, we will try to identify some of the most typical ‘populist’ ways of imagining the purposes, environments, agents and moral and political implications of imprisonment on the basis of the existing studies of the mass media’s representation of crime and prisons. Then we will go on to offer an account of the sociological aspect of populist penal imaginaries, following an analytical framework which is informed by the ‘moral panics’ approach. This two-step strategy is not meant to provide comprehensive analyses of the whole spectrum of populist phenomena within the field of incarceration (obviously such a task would require much more depth and scope than the current chapter can suitably offer), but it aims to summarise the essential empirical findings in the field for the subsequent examination of introspective normativity. The latter task must be pursued with an appropriate understanding of the concrete social settings and key mobilising mechanics of populist imaginaries, but meanwhile it is also keenly related to the limits of the sociological approach in addressing their normative aspects.⁴ This two-step analytical strategy is thus expected to serve dual ends: on one hand, it will prepare the empirical ground for our further examination; on the other, it can help to show the need to remedy the sociological perspective through the implementation of introspective normativity analyses in the case of the populist imaginaries of imprisonment.

⁴ See our argument in Chapter 2 (II.ii).

ii. Populist Imaginaries of Imprisonment in the Mass Media

To start the overview by examining images of imprisonment in the mass media is not only justified because of its prominent role in stimulating and mobilising populist claims on prison-related issues, but also because it is the primary carrier of most of the tangible and concrete forms of populist penal imaginaries. By reading the reports, editorial comments, columnists' opinions and audience feedbacks, we may capture a variety of voices that differ remarkably from the viewpoints expressed in the academic journals with regard to the same issue. Of course, viewpoints other than 'populist' ones also have their own channels of expression within the forum of the mass media, and there is no feasible standard by which to decide whether the content of a particular item is by nature 'populist' rather than 'deliberative'. As we mentioned earlier, how to define the boundaries of 'populist' views is far from self-evident and this issue can only be properly addressed when they are placed in specific social settings and the dynamics which generate and give meanings to them. Notwithstanding the ambiguity in identifying these 'populist' attributes, the extant empirical studies on mass mediated images of prisons manage to summarise some repeatedly observed features of how those images are represented and what assumptions are attached to them (e.g. Cheliotis, 2010; Manson, 2006; Wilson and O'Sullivan, 2004; Sparks, 2001c&2007a; Jewkes, 2007a). Based on those studies, we are able to draw up some general lines of the tangible 'countenance' of populist penal imaginaries, though their full depths cannot be exposed until they have been examined in the light of their peculiar social-constructive dynamics (a task which will be undertaken shortly after this section).

The mass mediated images of imprisonment in the UK can be depicted in terms of a variety of aspects which will be discussed below.

a. The prison environment and its routines

What is notable in the first place is that the coverage of prison issues is more or less marginalised in the mass media, especially in comparison with the coverage of violent crime and policing. And among those issues that do receive attention, the allocation of media resources is rather unbalanced in terms of topics (in comparison with academic research in the field of imprisonment).⁵ The focus of the media is often oriented towards high-profile prisoners (who tend to be high status figures, popular stars or convicts in high profile criminal justice cases). And by representing those images the media often suggests an array of constantly confirmed impressions about prison surroundings and routines.

Those repeatedly emerging themes include the *idleness* of prison life: the metaphor of a 'holiday camp' is the one most favoured by tabloid newspapers and it vividly describes the 'unworthy' privileges that the prisoners enjoy at the expense of taxpayers' potential welfare. This particular feature of prison life is represented as being not only in contrast with the bad moral character of prisoners but also with the painstaking working and living circumstances of the majority of common people: the audience and consumers of popular media reports and their interpretations of imprisonment.⁶ Moreover, this emphasis on the undeserving idle prison routines also indicates that there is insufficient moral condemnation being delivered within the prison systems and that 'justice' has not been achieved. The *Sun*'s reports about the treatment received by two high-profile prisoners, Robert Thompson and Jon Venables, demonstrates these points clearly. One of those reports used the headline 'Bulger killer No.2 goes abroad on lads' holiday' and starts with the provocative sentence 'James Bulger's killer Robert Thompson went on an *unsupervised* foreign holiday — *just like* his cohort Jon Venables.'⁷ In another report, the *Sun* highlighted the sex scandal of Jon Venables with the even more stirring title: 'James Bulger killer had sex in 'jail' home'.⁸ Notably, it stresses the laxity and idleness of custodial conditions – which is connived in to such an extent that the prison's rudimentary function of keeping convicted prisoners behind bars ceases to work and is replaced

⁵ For example, statistics shows that in the mainstream news media (Channel Four news, BBC1 and ITV) the number of stories about prisons is quite small. See the research result in Manson (2006).

⁶ See more details in the studies of Cheliotis (2010) and Sparks (2007a).

⁷ The *Sun* 06, April, 2011.

⁸ The *Sun* 28, March, 2011. Italics have been added by the thesis author for the purpose of emphasis.

by entirely opposite services: permission to go on holidays and have sex. In this extreme account, prison is not just a holiday camp but actually amounts to a 'home' which can even accommodate sexual relationships. Furthermore, it also emphasises the routine character of such practices by using the term 'unsurprised' and 'just like'. The case itself might be a rare one, but the strategies used by the *Sun* in presenting such an image of prison life are hardly unique in the tabloid press and other popular media channels.⁹

On the other hand, prison is also often depicted as a dangerous place, a warehouse full of morally corrupted individuals, and a dark and silencing cave where the 'civil dead' are buried. Those images and imaginaries about the prison environment is often presented in popular literature, drama and films about prison and, paradoxically, they assume no less prevalence among audiences than the 'holiday camp' imaginaries (Wilson and O'Sullivan, 2004, chapter 6). This type of imaginaries also appears to have a trans-boundary character, since its primary carriers are, instead of localised news reports, popular art forms which have access to an audience outside the original country which produces them. For example, the popular American prison drama *Oz*, which also attracts audiences in the UK, 'presents a vision of hell on earth in which inmates are so depraved and vicious that no sane person could possibly think they should ever again be let loose upon society' (Cheliotis, 2010: 175).

As we will shortly see, the coexistence of these competing patterns of imaginaries of prison environment in the mass media also constitutes a meaningful point for the exploration of the sociological aspects of populist penal imaginaries as well as their performances in terms of introspective normativity.

b. Prisoners: 'us and them'

⁹ The mass media reports on the prisoners convicted of James Bulger's murder are particularly revealing in demonstrating some of the basic characteristics of populist imaginaries, not only because they generate huge volume of media articles, but also because they involve viewpoints and strategies of image-representation which cover a broad range of prison management issues. In the following discussion of these mass mediated imprisonment imaginaries we will use it a representative case for the sake of the argument.

Garland (2001a: 137) made the distinction between ‘criminology of the self’ and ‘criminology of the others’ and used it to shed light on the transformation of penal imaginaries in the post-welfarist era. In his view, one of prominent features of the post-1970s Anglo-American penal field is that certain ‘pre-modern’ patterns of demonising offenders and demanding punitive and exclusionary measures to treat those ‘criminogenic others’ have gained considerable credit within the realm of political discourses. The imaginary of the ‘criminology of the other’ is thus in sharp contrast with the traditional welfarist mindset that views offenders as transformable individuals who are within the moral embrace of the community.

If we direct our attention to these mass mediated images of prisoners, we may find that the ‘us and them’ binary is quite widely implied and enhanced in the ways they are presented to the audience. This characteristic is even consistent within the two contrasting images of prison environment (‘holiday camp’ and corrupted and dangerous place). In the former case, the moral unworthiness of prisoners is highlighted, which is often complemented and re-confirmed by the reports of their shameless activities of abusing the system (the Venables case is just such an example). In the latter case, the representation of the corrupt surroundings usually does not lead readers to sympathise with the inmates who have to dwell with them on a daily basis, but tends to reinforce the impression that they are intrinsically connected with the negative aspect of the system and indeed part of it. So in both these imaginaries prisoners are hardly considered as respectable or even communicable. They are harmful because they are a burden on the backs of taxpayers, and they are morally beyond redemption and can be a tremendous threat if they bring their ‘codes’ of behaviour and living customs outside the prison walls. At the core of such imaginaries lies the assumption that prisoners are moral outsiders of the society and they threaten the values shared by ordinary law-abiding people (see also, Jewkes, 2007a and Baumann, 2000).

Certainly there are also different accounts and representations of prisoners in the media, including more reflexive and academic-styled ones. But, in terms of the ‘populist’ character, as we are going to discuss it in a moment, the pattern identified

above often prevails, especially on occasions when prison-related incidents become the pivot of fierce social reactions ('moral panics') and when prisoners become the object of 'folk devils' style stigmatisation.

c. Prison staff

Normally prison staff do not belong to the category of high newsworthiness and, if they appear in the media, it often means there is a connection with negative, and sometimes scandalous events (prison riots, prisoner escapes or the exposure of serious flaws of the system). And, in those cases, the prison workers often appear as kind-hearted fellows who fail to address the concerns of public safety (Freeman, 1998). This point is also often hinted at in the reports that stress the laxity and idleness of the prison environment and the easy access of prisoners to items that they are not supposed to acquire (for example, in the *Sun*'s report on Venables' 'holiday' and 'jail sex', the incompetent image of prison workers is also highlighted).

The image of prison governors and workers in popular artistic forms (TV drama, film, fiction), can be more diverse. Wilson and O'Sullivan (2004, chapter 8), for example, have discussed how the image of prison governors has been depicted in influential popular movies such as *The Shawshank Redemption* and *Brubaker* (they are Hollywood products, but their role in shaping stereotyped prison imaginaries can be also recognised in the British context due to the range of their audience), and they concluded that the representation of prison wardens in these movies may reveal social relations of a general nature and in fact tell us a story about 'ourselves'. In those cases, what gets stressed is the experience of 'being human' within the unique environment of prison.

d. Purposes and reformatory future

In contrast with liberal imaginaries, which apply different strategies to defend their values and conceptions of ends of imprisonment, the mass mediated views of the

purposes that prison should pursue appear to be a mix of ironical mockery and punitive assertions. Notably, we can hardly find in the forum of popular media any serious concerns about what might be the desired future of the prison service. Instead, the leading impression that they instil in their audience is rather static and it often has the effect of confirming that prison is the right place for bad guys and that there is little potential for it to become any better. The exposure of all the negative sides of prison life does not result in any reflections about how things might be done differently, but tends to leave the audience convinced that the status quo in prisons is so overwhelmingly rotten that it amounts to the proper expression of the very 'reality' of the institution and is thus beyond any possibility of change or improvement. Cheliotis observes that 'rather than undermining the external legitimacy of prisons, and despite endangering professional careers, media representations reinforce public perceptions of the overall essentialness of the prison institution and of the essentialness of its further growth and harshening' (2010: 175). Accordingly, good wishes and serious speculations about operating the incarceration system properly and striving for an ideal result both for the prisoners and for society are inclined to be downplayed within the mass media.

Unsurprisingly, the purpose of punishing the morally flawed and incapacitating the dangerous is often implied in media representations of imprisonment, which is rather in accordance with the impression created by them that things cannot be changed and that awful prisons and awful prisoners suit each other. On occasions when a high profile 'outrageous' event provokes moral panic-like social reactions, as we will discuss below, the punitive aspect can gain considerable momentum within the mass media and effectively enhance the 'tough line' position which was previously less visible among the soft strand of prison representations (such as mockery reports and comments about prison policies and incidents) which are widespread in the media.

The discussion in the above paragraphs of the populist imaginaries in the mass media is not meant to be exhaustive, and it can certainly be rectified and supplemented by new materials that might enable us to address the omitted facets and ever-changing happenings of such phenomena. Moreover, we can also note that a review of media-

represented imaginaries alone is not sufficient to explain their ‘populist’ character and their normative implications. In the following paragraphs we will try to shed some light on the sociological depth of the dynamics of these populist imprisonment imaginaries.

iii. The Sociological Aspect of Populist Imaginaries of Imprisonment

Whereas this discussion of the representations in the mass media has tried to outline the ‘countenance’ of populist views of imprisonment, it has not attempted to explain why the characteristics of these representations should be identified as ‘populist’. In this regard, sociological approaches would be especially helpful, as their concerns are not confined to the specific static content of media representations and their popularity among their audience, but are directed to uncovering those social mechanisms which are vital to the constitution and dissemination of such imaginaries. When we understand how they are constructed through dynamic social processes and especially what role the mass media plays in them, we can better grasp the phenomena of populist penal imaginaries and acquire a more solid basis for further analyses and evaluations.

With regard to the sociological perspectives related to the subject, those studies which are centred on the concept of ‘moral panics’ are particularly helpful for this purpose, as they offer well-established analytical frameworks as well as numerous individual case studies which may clarify the social dynamics and determinant mechanisms underpinning the phenomena of ‘moral panics’ and the creation of ‘folk devils’, which are also insightful for their investigation into the ‘populist’ aspect of mass mediated imaginaries of imprisonment. In the following paragraphs, we will try to examine how the analytical approaches developed in the literature on moral panics (Hall, et al., 1978; Cohen, 1972 & 2002; Goode and Yehuda, 2009; Garland, 2008) can be applied to interpret the dynamics of populist penal imaginaries in the field of imprisonment. We will find that despite its pertinence in uncovering some key aspects of populist penal imagines, the moral panics framework needs to be adapted in order to address some contemporary issues more adequately. In the later part of

this section, we will also have the chance to discuss the limits of the sociological approach in addressing the moral dimension of populist penal imaginaries.

a. The role of mass media

Firstly we can start with the role of the mass media in the social construction of populist penal imaginaries. In the respect, Stuart Hall and his colleagues have offered a comprehensive account of how the media function as an ideological instrument to reproduce the 'definitions of the powerful' and impose them on the whole of society, including the suppressed and disadvantaged social sectors (Hall et al., 1978). According to their perspective, the media in effect coordinates itself with the powerful to create a 'consensus', a framework of agreement which, by disabling and excluding alternative frameworks, determines what issues are 'relevant' in the discursive agenda. This 'consensus creating' function of the media is also recognised by the moral panics theorist Stanley Cohen (1972) and is viewed by him as the essential aspect of its performance. When this point is applied to the mass mediated imaginaries of imprisonment, we can get the insight that those typical viewpoints and impressions of prisons in essence reflect the definitions of prison issues of the 'primary definers' (who, in the perspective of Hall and his colleagues, are the powerful in society), as the mass media transforms them into 'public idioms' or popularised forms of images and representations. Based on this particular assumption, the media theorists come to the conclusion that the 'consensual' imaginaries established in the mass media about imprisonment are constituents of an integral social structure in which the spectrum of the dynamics of economic and political power and the spectrum of discursive performances within the mass media are in a symbiotic relationship and that they mutually enhance each other. Accordingly, in this perspective, to defy the populist images and representations of imprisonment should not be simply considered as a task of rectifying them in terms of 'truth telling' in the media; it must be addressed in tandem with the enterprise of criticising and bringing change to the dominant social structure and its economic and political arrangements.

However, when it comes to the contemporary context, we may find that the media theory of Hall and his colleagues will encounter some difficulties, as the boundaries of the discursive ‘consensus’ are far from clear-cut in the mass media. Unlike the circumstances in the 1960s and 1970s, when the moral panics approach originated, contemporary British society (along with many others) has witnessed the flourishing of new media forms and a divergence in cultural and political expressions. As Garland (2008) has commented, even the ‘folk devils’, who used to have no discursive power, have now become able to ‘fight back’ by voicing their views through new media instruments. As a result, the hegemonic consensus is no longer available in the discursive forum of the new media era and has been replaced by considerable fragmentation and competition between diverse strands of imaginaries and representations. With regard to the issues of imprisonment, we can often observe that the mass mediated imaginaries are in sharp contrast with the practices and rationales of the professionals in the field who, in the view of Hall and his colleagues, are supposed to play the role of ‘primary definers’ under normal conditions.

For example, the reform scheme which tried to improve the ‘first night’ treatment of inmates in prisons once provoked immensely contradictory comments in the media. The liberal prison scheme advocates hailed the change on the basis that it contributes to a less stressful environment for the new-arrival prisoners, which reflects their long-standing notion that the exercise of carceral power is to reform prisoners rather than inflicting pain on them. But for the tabloid papers and many of their audiences, the change simply confirmed the ‘holiday camp’ image of the prison system. Yet in the institutional imaginaries about the same treatment, the focus might be different from either of them. The risk of prisoner suicide actually plays a significant role in the mobilisation of ‘first night’ treatment, as is demonstrated in the official instructions of HM prison service (PSO 2700).¹⁰

It can be noted that populist penal imaginaries, despite their prominence within the mass media, only enjoy a limited degree of ‘consensus’ (as is the case with the other

¹⁰ PSO 2700 (replaced by PSI2011-064 in 2012), which came into effect in 2003, established a clear linkage between the early period in custody (particularly the ‘first night’ treatment) and the management of the risk of prisoners’ suicide and self-harm.

forms of penal imaginaries). Therefore, the assumption that their normative orientations are exclusively determined by the definitions of the dominant class within the social structure does not always apply to the current media environment. Yet the sociological perspective on the relationship between the role of the mass media and the moral definition of the dominant social sector remains insightful and we will return to it when we embark on our discussion of the normative dimension of populist imaginaries.

b. Multi-agent involvement in constructing populist imaginaries

Even if we reject the monistic approach to understanding the relations between the mass mediated 'populist consensus' and the power structure of the society, there are still ways of uncovering the social dynamics of populist imaginaries of imprisonment within the perspective of moral panics. In Cohen's (1972, 2002) analyses of the social creation of 'folk devils' from youth groups like Mods and Rockers, multiple agents were involved and they assumed different roles within the process. This approach may also be applied to account for the formation and dissemination of the populist views about prison issues. By placing the mass mediated imaginaries of imprisonment within the 'moral panics' dynamics, we can broaden our understanding of their characteristics and mechanisms in terms of their constitution and performance.

Based on Cohen's conceptual framework and research, Goode and Yehuda (2009) have summarised the key actors that are involved in the constitution of a moral panic. They include five segments of the society: the press, the public, agents of law enforcement, politicians and legislators and action groups. Through the interactions between those social segments, a concrete moral panic gets mobilised, a particular group of 'folk devils' is stigmatised and a cluster of moral discourses are reaffirmed. In specific terms, the media carries out the task of detecting those events that are newsworthy and which potentially touch the moral nerves of the audience. Typically they 'handled the seaside events with exaggerated attention, inflating incidents, distorting accounts and stereotyping characters and behavior' (Goode and Yehuda,

2009: 23). Then the concern of the public was stimulated and the events were perceived by the public as a symbol of some of the larger problems of the society. Accordingly the agents of formal social control also responded to the 'threat' presented by the press and the concerns of the public; what typically happened was that the police attempted to broaden the scope of law enforcement, asked for more resources and took more severe actions. The impact of a moral panic may also reach into the political sphere, where politicians called for stiffer treatment of those problematic people or 'folk devils' and corresponding legislative change. The dominant mood in such cases can also be described as 'angry, self-righteous, vindictive, condemnatory, and punitive' (2009: 26). Apart from that, moral panics can also generate action groups who believe that existing remedies are not enough and seek to mobilise more intensive 'germinal social movements' to fight against the problem in question. At the same time, the reactions from those respective social sectors can also fuel new reports in the press which in turn enhance the seemingly 'objective' character of the identified moral panic.

We can note that this analytical framework based on the interactions of multiple agents does not necessarily assume that those factors will finally constitute a hegemonic structure of dominance which in essence reflects the definitions of the powerful. It instead gives more weight to the concrete interactive mechanisms that operate between the different actors and leaves room for contingency and localised socio-political dynamics. This may help it shed light on the phenomena of populist imaginaries of imprisonment better than the monistic media theory, since their production is linked with reactions from multiple social sectors and involves the participation of different actors and institutions.

However, we may note that the rules, principles, guiding rationales, concrete conditions and daily routines in prison normally receive only limited media attention and public concern, although they have their particular representations within populist imaginaries. Thus those penalty-related spheres hardly ever become the cause of a moral panic by themselves. It is instead more common for moral panics to be triggered by high profile cases of violence or sexual offences. Under such

circumstances, the inmates who are labelled by the media as ‘folk devils’ tend to attract attention to prisons as well, which makes the incarceration practice per se the main focus of the moral panic dynamic. In this respect, those custodial and parole practices which involve sex offenders are particularly susceptible to such a construction, since those prisoners can easily be labelled as folk devils and become the target of the rage of moral panics audiences, and the prison system which fails to manage the ‘dangerousness’ of those prisoners tends to become the object of harsh criticisms in the process as well. This was demonstrated in the anti-paedophile campaign which was conducted by the residents of Paulsgrove estate in Portsmouth in August 2000.¹¹ That event was directly driven by the fear of the release of pre-sex-offenders into the community, whereas the question of how to determine the use of incarceration when dealing with a particular category of prisoners was also a major concern of the protest. The campaign for ‘Sarah’s Law’ mobilised by the *News of the World* had a similar tendency in their choice of folk devils.¹² Their objective of amending the law to enable the ‘naming and shaming’ of child sex offenders was also concerned with the imprisonment system in terms of its post-release management policy. In other cases, those high profile prisoners who are tagged as folk devils can also bring the reach of moral panics into the spectrum of the prison system, like the aforementioned Venables case.

In the above cases, we can observe some typical multi-agent constructing dynamics, as identified in the moral panics theories, but within the horizon of those ‘moral panics’, issues related to imprisonment were often subordinate to the other attributes of the events (e.g. sex offences, hideous violent crimes or some horrifying victimisation experiences) which stood out more distinctively in the eyes of the audience and the actors involved. Nevertheless, such dynamics still have vital impact on the confirmation and dissemination of populist imaginaries of imprisonment. Through their construction, the mass mediated images of incarceration do not remain a static picture of the rather unfamiliar and ‘far-away’ world of prisons. Now they are perceived as being part of a broader problem that generates massive social concerns.

¹¹ See the report in the *Independent*: ‘Wardens to Patrol Paulsgrove Estate’, 19 September, 2000. See also the study of Williams and Thompson (2004).

¹² See the edition of the *News of the World*, 30 July, 2000.

And when the moral panics about sex offenders and other folk-devil-type prisoners are stimulated, the related imaginaries of imprisonment, which is perceived as being an integral element in the 'big picture' of threat, also tend to be confirmed and reinforced. If the situations in prisons are exposed as being especially outrageous and intolerable by the outburst of such an event, they are also likely to become an independent source of the spiral of moral panic. Accordingly, the reinforced populist imaginaries of imprisonment can obtain momentum and influence other social sectors through these interactive processes, including policy and legislative changes, as was reflected in the 'Sarah's Law' campaigns.

c. Consequences of populist imaginaries of imprisonment

With regard to the actual effect of these populist imaginaries on the institutional practices of imprisonment, extensive empirical findings and analysis are still in order. However, we can observe some marked local variations in prison policy making at a first glance (e.g. the difference between Scotland and England and Wales), despite the fact that the mass mediated prison imaginaries are very much a trans-locality phenomenon. Moreover, in the case of Scotland, its prison policies and its agenda of prison reform are not only very different from those of its English counterparts, but have also changed dramatically over the past few decades (McAra, 2006 & 2008). Clearly there are numerous factors which contribute to the status quo of the custodial regimes, and it is highly uncertain which aspect of them is particularly attributable to the salience of populist imaginaries.

There are, however, studies which have tried to examine the relationship between the rising imprisoned population and the punitive climate of opinion. For example, Millie et al. (2003) have carried out a piece of research attempting to account for the growth in the prison population in England and Wales, and their finding was that the rise in the prison population was not a result of rising crime, but was due to 'sentencers passing more custodial sentences, and passing longer sentences when they opt for custodial sentences' (Millie et al., 2003: 383). And the researchers found that punitive public attitudes are likely to be one of the main factors that lie behind this sentencing trend. The populist imaginaries of imprisonment are closely

associated with the punitive atmosphere in which criminal justice institutions operate, yet to identify in a concrete way how they impact on the various aspects of the practices of incarceration, we still need more empirical studies to be carried out on this spectrum.

iv. The Normative Dimension of Populist Imaginaries of Imprisonment

This discussion is certainly far from being a complete coverage of the sociological aspects of populist imaginaries of imprisonment, and its major purpose is to illustrate the way in which such sociological studies make sense of the phenomena and give us insight into how they are actually formulated and circulated within the current socio-political setting. Together with the studies on the mass mediated prison representations, they provide us with background knowledge of the factual dimension of the current dynamics of populist imaginaries of imprisonment.

However, they rarely touch on the issue regarding how to treat the moral status of these so-called populist claims. This issue has been discussed by us in the first two chapters, and in our view it is related to the major limits of the sociological approach in handling these normative issues against the background of the decline of universal normativity within the imprisonment field.¹³ In the case of the populist imaginaries, we can note that the mainstream sociological approaches - such as the moral panics analysis - tend to imply the judgement that these mass mediated punitive views on prison-related issues are ill-informed, exaggerating, disproportionate and inherently incapable of being taken seriously as an equal opposition for the purpose of normative debate and dialogue. Yet such an assumption has certain normative implications which are by no means unassailable.

For example, in the account of Goode and Yehuda (2009) of moral panics, exaggeration is viewed as an exterior attribute of the social reactions and expressions of populist views and is subject to objective observation and identification. But as

¹³ See our discussions at Chapter 1 (I.ii) and Chapter 2 (II.ii).

David Garland (2008) has pointed out, to apply the term ‘moral panic’ always has an ascription effect and creates differentiation between those people who apply it as outsiders and those who are tagged (by the former) as actors engaging in the generation and escalation of a specific moral panic. It can be anticipated that the latter would resist the tagging and would claim that their involvement was suitable as a moral response to the detected deviancies. Indeed, in the case of mass mediated imaginaries of imprisonment, any comparison with the actual situations in prisons would make clear that such ‘holiday camp’ metaphors of prison and ‘monster’ images of prisoners are exaggerations. However, what is at stake here can scarcely be reduced to a debate about or a clarification of ‘objective facts’. Even the advocates of the ‘holiday camp’ metaphor can defend it from a moral point of view; that is: even though it may be an exaggeration of the actual situation, it is *appropriate* and *proportional* as a means of moral engagement in seeking to counter and rectify the extant flaws of the custodial system. To accept that this is just a product of moral panics means that this particular dimension of moral engagement is poorly recognised or at least downplayed. In other words, there is an inherent normative facet in determining the issue of ‘proportionality’ and there is no absolute standard which guarantees that the standpoint of ‘moral panics’ academics is automatically better founded than those who are depicted as ‘moral panics’ actors or mass media columnists who also use the term to make a moral judgment. The fact that moral panics scholars resisted using the term to address American reactions to the 9/11 event until the public emotion had cooled down seems to suggest that researchers are also within the moral boundaries of their own society and they can by no means achieve any absolute grounds for settling the potential moral divergence which may be involved in the populist dynamics (see also, Garland, 2008).

The controversy related to ‘exaggeration’ and ‘proportionality’ also suggests that the mainstream sociology of moral panics has largely neglected the ‘boundary-setting’ facet of the penal discourses within contemporary societies. This facet is central to the Durkheimian theory of punishment, which conceives the central function of punishment (and broadly the condemnatory social reaction to crime and deviance) as the maintenance of the moral order of society. More importantly, it cannot be taken

merely as neutral scientific findings; it has certain moral implications. As we argued in Chapter 2 (III.i), Durkheim's perspective on morality may be better interpreted in a non-positivist fashion, in which the dynamic maintenance of the moral boundaries of a society is not treated just as a sociological fact, but is essential to the moral being of its members and their ways of effectively participating in and experiencing social reality. It is *morality per se*. This means that the epistemological element of morality cannot be morally authentic in separation from its social-expressive forms. Neither logical soundness and coherence, nor objectivity and impartiality automatically create the moral character of certain social norms: what matters is how they have gained their vitality within the moral performance of the society. In this perspective, the religious life in primitive societies may involve highly impractical and irrational elements from an outsider's point of view, but it was essential for the moral performance of the society in question, as well as for its individual members, as it provided the key sources for the latter to realise their moral being within the community (Durkheim, 1915). In this regard, it is intrinsically moral despite all its seemingly 'grotesque' rituals and conceptual systems.

In contemporary societies, this non-reflexive form of primitive morality can no longer sustain itself, but in the meantime the expressive domain cannot be easily ruled out. When the sociological approach judges the populist views of imprisonment in terms of proportionality, it largely fails to address this normative dimension, as identified above. In those cases, it tends to downgrade their normative status on the grounds that they exaggerate the 'real' circumstances, and implicitly or explicitly advocates its own moral or political values (which are often oriented towards liberal or left-wing stands). Yet, as we have discussed in earlier chapters, such a strategy is not adequate to respond to the normative predicament within the contemporary imprisonment field.¹⁴

For many actors who engage in the generation and dissemination of populist representations of imprisonment, they believe that they are acting to demand the realisation of democratic reform of out-of-touch penal policies and institutional

¹⁴ See our discussion in Chapter 2 (II.ii).

practices (as can be seen in the case of the Sarah's Law campaign). It is thus difficult to expect that they would change their position on being informed that their claims are sociologically subject to the construction of differential social forces and structural factors and that they factually betray a neutral judgement of the real situation of imprisonment. Conversely, it may be anticipated that they would insist that there is an element of value in what they advocate rather than it being merely a sociologically over-determined viewpoint.

To deal with this dilemma requires that we give appropriate recognition to the normative dimension of these populist imaginaries. Only on that basis can we find a way to uncover the flaws and limits in their normative performance and explore their innovative potential. This endeavour may prove more fruitful than the tactic of neutralising the normative validity of populist voices and treating them exclusively as over-determined social facts. Since, in comparison with other types of penal imaginaries, the populist ones make more intimate contact with the common audience in the society, they have significant potential to enrich the normative performance of the imprisonment field and make it more democratic by unleashing their potentiality for normative innovativeness in a constructive way.

As we have discussed in detail in Chapter 2, the analytical and evaluative framework of introspective normativity is designed to pursue this task. In contrast to the mainstream sociological approach, it does not presumptively rule out the moral quality of populist imaginaries in its analysis, but instead tries to shed light on how the populist dynamics might be understood as a particular normative pursuit.

By uncovering their normative performances in a reflexive way, it is capable of presenting and analysing both their innovative and their nihilistic aspects and helping to decide the direction of improvement.

In the following section, we will thus proceed to examine these populist imaginaries of imprisonment through the lens of introspective normativity.

III. A ‘Handicapped’ Normative Pursuit: Populist Imaginaries in the Perspective of Introspective Normativity

i. Stereotypes, Narratives Construction and Normative Certainty

In the overview part of this chapter, we have discussed how a variety of stereotypes about the images of the prison, its particular routines and environment, and the prison staff and inmates, have characterised the representations of imprisonment in the mass media. The use of those readily-applicable metaphors such as ‘holiday camp’ (prison), ‘monster-like’ prisoners and ‘out-of-touch’ penal experts and policy makers has the effect of advancing a particular set of narratives which imply a settled view regarding how things are supposed to occur in the prison world and to the people living in it. By so doing they also signal strong and distinctive messages referring to what would be the right way of responding to the problems of imprisonment.

In one of the methodological sections of this thesis (Chapter 2, III.i.b), we analysed how narrative construction can be intertwined with the establishment of a particular vision of moral reality in Durkheim’s works. In that case, Durkheim’s construction of the narrative of specific social dynamics concerning the performance of *conscience collective* and the reaffirmation of the moral order of society serves as the unique discursive carrier for a social moral philosophy which is prone to the pursuit of solidarity and collective ends and is opposed to the *laissez-faire* approach.

The normative performance of the stereotype-based populist imaginaries has something in common with that tactic. The stereotypical depiction of prison related issues does not simply describe the circumstances of imprisonment in terms of the populist imaginaries, but also expresses a peculiar normative understanding of them. For example, the cynical ‘holiday camp’ stereotype and the corresponding discourse on the excessively ‘lax’ intra-prison order imply the evaluative judgement that the official prison management scheme and the philosophy underpinning it have betrayed justice and abused the trust of the law-abiding community. Other populist

narratives that are disseminated through the mass media also tend to transmit a similar message: the official system is unreliable and misleading and it turns a deaf ear to the voice of the common citizens. Accordingly, those discourses work together to construct a particular moral universe in which their audience are urged to adhere to the ‘consensus’ that they deliver as to how to define the problems of imprisonment and to adopt the corresponding attitudes towards them. As we noted in the overview section, the mass mediated images about the unalterably rotten prison surroundings and abominable inmates are entangled with the conservative inclination to address the moral implications of imprisonment: that is, since it is an inherently degrading institution with inmates whose evil characters perfectly match the way they are treated, the optimal choice is to impose stringent control upon it and segregate it from normal society and innocent people. Thus the use and acceptance of such stereotypes and narrative constructions implies a peculiar taking-of-sides in terms of interpreting and responding to the issues related to incarceration.

Notably, the normative performance of penal imaginaries based on the use of stereotypes and mass mediated narrative constructions is characterised by the pursuit of certainty and resistance to ambiguity. The more affirmatively and arbitrarily the narratives are organised within the populist forum, and the more conspicuous the normative messages they emit, the more likely they are to be held to be fully expressive of the intuitive moral judgements and ‘gut feelings’ of ordinary people (as against the sophisticated but morally ‘indifferent’ expert opinions). Compared with other approaches in terms of normative performance, they rely greatly on their interaction with and feedback from the audiences of the mass media, as the normative certainty that they seek to present and to preserve needs to be confirmed repeatedly by their expressive affirmation. This is manifest in the moral panic dynamics that we discussed in the previous section: the generation and growth of populist claims has to involve the participation of multiple agents and to experience a spiral of mutual stimulation and escalation. Without the resonance of the populist audience, these narrative constructions under such circumstances would be fragile and lifeless. Conversely, when the support from the audience is prompt and steadfast, the normative implications of the populist narratives tend to be characterised by

certainty, affirmativeness and unambiguousness. In such cases, the stereotypes regarding prisons would appear to be accurately reflecting the moral allegiances of the community toward such issues, despite the fact that they may fail to accurately reflect the actual situations of imprisonment.

ii. Oblivion of the Predicament of Universal Normativity

We may note that normative performances, as we have observed in the case of these populist imaginaries, can produce the effect of certainty among their audiences who, for various reasons, react in favour of their flourishing. And this also forms one of the responses to the post-welfarist predicament in the normative penological field. Whereas there is significant divergence in the normative approaches to imprisonment and a marked decline in the prospects of any universal normativity in this sphere, the populist imaginaries represent an attempt to revert to absolutist moral grounds for judging prison issues.

However, the ‘moral universe’ constructed through these stereotypes is mostly static and closed. While the populist imaginaries seek to achieve certainty in their normative performance, it is at the expense of excluding the opposite and alternative normative understandings from their own perspective, and leaving little room for any reflexive revaluation and revival of their own presumptions.

Accordingly, the normative performance of those stereotype-based imaginaries lacks any inherent motive to bring change into the ‘moral reality’ presented in their narratives. Instead, in the heart of their normative construction, there is an essential tendency to stick to conventions and to make their version of ‘moral reality’ appear to be a perpetual one. This explains why, in the eyes of populist campaigners, novel prison reform programmes (like ‘first night’ treatment) will always appear morally dubious.

Thus the normative domain of these populist imaginaries can be viewed mainly as a closed one. And since they depend crucially on the reactions and feedback of varied

sources – ranging from the mass media and its audience, through the dynamics of penal politics, to the prison system and the official criminal justice process – to acquire and maintain the confirmation of their specific normative visions and claims, we may argue that the effect of their normative performance is externally decided. The normative certainty it pursues is then scarcely more than a socio-psychological certainty which is reinforced through certain exterior social construction mechanisms. From the evaluative perspective of introspective normativity, the normative performance in this case lacks the inner vigour to achieve genuine normative certainty. The fact that it needs external means and mechanisms to reinforce its normative vision actually confirms its incapacity to realise any viable normative construction and to offer true certainty within the post-welfarist imprisonment field.

This deficiency in the populist imaginaries is intimately related to its implied orientations towards other divergent and competing normative approaches and perspectives within the imprisonment sphere and towards the predicament of universal normativity per se. The representative pattern of their normative performances can be described as total denial of the justifiability of any moral horizons that are in conflict with their own and a failure to acknowledge the moral diversity and plurality that exists within the field. As we showed earlier, the more drastic the populist dynamics become, the more affirmative they are about the narrative they put forward and the normative messages implied within it, and the less likely they are to give any reflexive space to their own normative presumptions and possible alternatives. In terms of our analytical angle, such an approach to normative construction can be comprehended in the light of the ‘oblivion’ pattern that we identified in Chapter 2 (III.iii.d): in the face of the post-universalist circumstances, the normative performance of populist imaginaries is absorbed in defining and pursuing its own penal ideal and taking it as the absolute basis for addressing the problems of imprisonment, while disregarding and refusing to recognise the decline in universal normativity and the fading of the feasibility of essentialist solutions to the moral dilemmas in the field. The result of ‘oblivion’ approach is a remarkable normative closure and nihilism: any alternative penal ideals, as well as the crucial element of reflexivity, get utterly excluded from its perspective.

Any vibrant and fruitful kind of normative performance needs to do the contrary: it must build up its particular moral realities in such a way that other possibilities of normative construction can also be reflexively included within its imaginary parameters and it needs to make sure that there is always an active self-reflexive and innovation-prone element within the endeavour. Measured by this standard, many of current populist imaginaries may be regarded as a ‘handicapped’ approach in terms of their normative pursuits. Their stereotype based narrative constructions hinder them from being open to diverse visions and ideals and under such conditions they are hardly able to fulfil the task of seeking genuine normative certainty for post-welfarist incarceration practice.

iii. Possibilities of Normative Innovation

In the previous paragraphs, we have talked about ‘populist penal imaginaries’ as if they formed a coherent whole. In reality, this is not exactly the case. As we discussed in the overview section, there are hugely diversified forms of imaginaries of imprisonment presented within the forum of the mass media. Most of them are not yet influential enough to claim a ‘populist’ status. However, it is important to notice that populist penal imaginaries are not a static category. There are moments of radical change when conventional imaginaries collapse and get replaced by novel ones.¹⁵ With regard to the public imagination of imprisonment, there are also historical events which indicate the possibility of overall transformation. For example, in the storming of the Bastille, which marked the start of the French Revolution in 1789, the public imaginaries of prison and prisoners underwent a huge transition: the previously suppressed ideas and sentiments about prisoners and the prison system suddenly attained a dominant status and were converted into the conventional ones. Despite the great difference in contexts, it is still important to acknowledge that there is non-reducible potentiality for current populist imaginaries

¹⁵ A relevant example here is offered by Foucault (1977), in which he demonstrated that people’s attitudes towards public execution in early modern Europe were actually ambivalent and such uncertainty (with regard to whether to conform to the authority of the monarchy or to sympathise with the convict) became one of the factors that led to its final abolition.

of imprisonment to shift on to a different track of narrative construction and normative performance.

Therefore, we use a collective term in our analysis for the sake of identifying and assessing some of the most distinctive phenomena within the contemporary populist penal imaginary spectrum, but it is significant for us to realise the different possibilities of the mass mediated discourses and images of imprisonment. This may not only remedy omissions caused by generalisation, but may also help us to notice the innovative potential within the mass-mediated representation of imprisonment.

As we mentioned in the overview section, the advent of the new media era has created abundant space for more individualised expression of views about the existing penal practice and its moral aspects. Under such circumstances, the hegemony of particular types of representations of imprisonment is not bound to take place, notwithstanding its affinity with the taste of the powerful ‘primary definers’ or that of the security obsessed public. Insofar as alternative kinds of interpretations and imaginaries have access to the forum of the public media, they maintain the potential to overturn the mainstream discourses and to reveal previously marginalised normative implications. Thus the content of ‘populist’ representations is inherently fluid, which is in opposition to the disposition of stereotype based imaginaries of imprisonment towards closure and stabilization. For example, along with the rise of imprisonment rates and their perceived negative social consequences, the abolitionist and cosmopolitan discourses about the reform of the incarceration system have also gained influence through various forms of media dissemination. So have those reflexive artistic representations of prison life by independent film makers, stand-up comedians, novelists and playwrights. Their existence makes the mass mediated forum amenable to more open-ended and creative forms of normative performance than those of the stereotype based narratives. We will further continue to pursue our discussion of the innovative possibilities of these forms of imaginaries in Chapter 6.

Apart from the existence of non-mainstream approaches in imagining prison related issues, the unique innovative potential of the mass mediated imaginaries lies in their

capacity to remedy the limits of the elite dominated pattern of discursive performance within the imprisonment field. The 'populist' dynamics relating to the dissemination of such imaginaries, in spite of their often reactive and intuitive disposition, provide opportunities for enhancing the role of democratic participation in defining the purposes and moral implications of the prison system. In this respect, they remain significant resources for confronting the predicament of universal normativity within the contemporary imprisonment field. Yet it is certain that more work needs to be done so that the handicapped normative pursuit within the populist realm can be turned into a more inclusive and deliberative endeavour.

IV. Conclusion

In this chapter we have mainly dealt with the populist type of imaginaries of imprisonment and have sought to examine their performance in terms of the perspective of introspective normativity.

An overview of this spectrum shows that the stereotypes based representations of imprisonment in the mass media have played a major role in delivering populist messages about how prison issues should be responded to. The dissemination of these populist imaginaries of imprisonment has also been exposed as being subject to the dynamics of social construction in which multiple agents and institutions are involved in creating the peculiar conditions required for those stereotyped images and their political implications to be highlighted within the public domain.

However, what we are concerned with particularly is how to identify and take seriously the normative aspect of these populist imaginaries, which tends to be played down in the critical sociological analyses. Our examination reveals that, in terms of the performance of introspective normativity, the current forms of these populist imageries have serious limitations in addressing the predicament of universal normativity and in responding to the diverse ideals and perspectives within the imprisonment field. Their pursuit of normative certainty is tied up with a static and closed vision of how the prison world is and should be. If the populist

imaginaries are viewed as a particular kind of normative pursuit, our investigation demonstrates that it is a 'handicapped' one and one that is not well placed to serve as the basis for solving the normative dilemmas within the imprisonment field.

Yet we have also tried to show that these populist imaginaries are not to be dismissed completely as a forum of narrative construction and normative performance. They also comprise significant resources and possibilities for normative innovation, particularly with regard to the overcoming of the limits of the elite dominated approach in defining the purposes and rationales of incarceration. In order to make the normative performance of these populist imaginaries more productive, it is crucial to resist the nihilistic tendency of resorting to stereotypical representation of imprisonment and engendering normative closure. For this purpose, it is important to recognise the non-mainstream forms of representation of imprisonment and to make the mass mediated forum more reflexive and inclusive of pluralistic penal ideals and perspectives.

Chapter 5 Risk-oriented Imaginaries of Imprisonment

I. Introduction

In the last two chapters, we have examined the liberal and populist strands of imaginaries of imprisonment in terms of their normative performances within contemporary British society. Although we have paid much attention to their innovative forms, which have been relatively recently developed in relation to the post-universalism predicament, it is also worth noting that both liberal and populist imaginaries have behind them strong traditions in formulating their respective concepts, notions, values and paradigms of penological ideals which, to a considerable extent, continue to affect and circumscribe their present configurations.

The risk-oriented imaginaries, by contrast, are commonly thought to be a more recent and, typically 'late-modern', phenomenon. Ulrich Beck's (1992) influential thesis on 'risk society' highlighted the distinction between those traditional lines of social thinking which centred around class differentiation and wealth distribution, and the 'risk' logic, which is characteristic of societies which are fluent enough to have overcome scarcity but in the meantime are increasingly exposed to new modernization hazards. In Beck's view, risk-oriented social thinking is obsessed with the generation of the knowledge of risk, with the negotiation of its political significance and with the precautionary management of its potentially catastrophic consequences. The core concern is no longer with the active pursuit of 'good' ends, but with future harm prevention. Such patterns of thinking are believed to have transformed a vast spectrum of current social life and governance styles and to have contributed to the emergence of a new political and cultural ethos which is permeated with risk calculation.

In the field of criminology, there is also an expanding body of literature which strives to identify phenomena and consequences related to the rise of 'risk' in the penal sphere. For example, Feeley and Simon (1992 & 1994) have noted the emergence of actuarial justice and of a 'new penology', in which 'the language of probability and risk increasingly replaces earlier discourses of clinical diagnosis and retributive judgement' (1992: 450). In the case of imprisonment, in particular, there is an array of studies which have either explored the potential use of risk rationales within the various sectors of the prison system, (e.g. Andrews and Bonta, 2003 & 2006; Kemshall and McIvor, eds, 2004; Hannah-Moffat, 2004) or examined critically the moral and political aspects of the specific risk-based practices in prison and the overall outcome of a risk-penetrated custodial regime (e.g. Hudson, 2003; Ward and Maruna, 2007; Lacombe, 2008). Those scholars have in principle agreed on the pervasiveness of risk-thinking within the current Anglo-American penal field as a matter of fact; but as far as the criteria of 'good' practice in risk assessment and risk management are concerned, their ideas are much more divergent. Such ambivalence also applies to the ways in which the moral and political implications of risk phenomena are interpreted. For example, the introduction of risk calculation has admittedly transformed many prisoner treatment programmes (especially those designed for violent offenders and for sex offenders), but can such changes be deemed to be a success for effectiveness and political pertinence (in terms of due consideration for the safety demands of the public), or should they be denounced as intrusive in relation to prisoners' rights and well-being, and even as a key contributor to an overall cultural trap which renders the broad social sphere more susceptible to insecurity and tightened discipline? When it comes to issues like this, we will find ourselves faced by quite polarised standpoints that are implicated in different programme designing rationales and theoretical approaches to the studies of risk in the penal sphere.

The ambivalence in comprehending risk-based practises and discourses seems to suggest that they are intrinsically value-laden and by no means politically neutral, despite the fact that they are usually constructed in a techno-scientific language. In fact they do not merely reshape different aspects of the imprisonment system in the

instrumentalist sense, but also play an important role in re-orienting the landscape of normative imaginaries of the field of incarceration: its overall purposes and legitimacy grounds, the aims and objectives of individual custodial sectors, criteria of assessment, the interpretation of prisoners' needs and characters, etc. Those perspectives are not always explicitly articulated, since the practitioners and proponents of risk-oriented approaches scarcely view their activities as having anything to do with the fundamental construction of a new normativity, but tend to take those (normative) facets as self-evident. However, with the triumph of risk techniques in myriad individual cases, it has become prominent that the penal sphere has experienced a change that is more fundamental than what can be described as the 'efficiency enhancement' or 'rationalisation' of the incarceration system. What accompanies the prevalence of risk techniques and strategies in the operations of the custodial system is the spreading of a particular strand of value judgements and presumptions, which in effect tend to create new allegiances in terms of penological norms and which take up much of the space left by the withdrawal of traditional penal welfare ideals. For some commentators, these features of risk-calculation have in effect played a crucial role in the constitution of an overwhelmingly control-oriented culture in contemporary societies like the UK and the US (Garland, 2001a).

Although the assertion that a totalised risk regime or 'new penology' has already arrived remains quite contestable, it can be acknowledged that 'risk' does play a crucial role within the spectrum of penal imaginaries in the post-universalist era. For an investigation based on the perspective of introspective normativity, it thus is vital to take into account the case of risk-oriented imaginaries, and to examine how they perform under the conditions of the withering of universal normativity and in relation to other contemporary imaginaries of imprisonment.

Just as our preceding studies of the liberal and populist imaginaries have proved that we can gain insight from exposing both the nihilistic and the innovative aspects of those penal imaginaries in terms of their normative performance and shed light on the possibilities of improving the quality of normative pursuits in the post-ideological penal circumstances, the particular normative reality that is linked with the risk-

oriented imaginaries is envisaged as being capable of providing a significant resource for the undertaking of introspective normativity inquiries. Moreover, they can also give us clues for examining some of the latest tendencies within the contemporary imaginaries of imprisonment and enriching our understanding of their normative performances.

As we tried to show in the earlier chapters (especially in Chapter 2), the approach to the examination of introspective normativity is quite different from the orthodox moral and political analyses undertaken by criminological inquiries. In the case of risk-oriented imaginaries, we may note that the existing literature has already offered extensive analyses of their moral and political implications, but when it comes to what particular kind of normative reality is being constructed and how it is realised in those imaginaries, we still face a new area of inquiries. The present chapter is thus devoted to the task of carrying out an investigation into the risk-oriented imaginaries of imprisonment in the UK with a view to uncovering and assessing the strength and weakness of their performances in terms of introspective normativity. To start with, we need to clarify a few questions concerning the definition of ‘risk-oriented imaginaries’.

II. Some Conceptual Issues

The first issue concerns the question: do the multiple risk approaches which are being applied or advocated within the custodial field follow one single rationale and can they thus be addressed in a single collective term?

If this is the case, we have to assume that those risk-based programmes and guidelines in prisons, despite their variation in contexts and concrete formations, at least share some common features which are sufficient to create a recognizable conceptual coherence. Relevant to this, there are questions regarding how we place ‘risk imaginaries’ in relation to the liberal and populist cases. As the risk rhetoric becomes increasingly pervasive, it is also common to see that it appears within the

populist as well as the liberal discourses more and more frequently. For example, in the construction of populist visions of prisoners, the issue of 'risk' has been routinely picked up by tabloid papers to endorse the assumption that those who are locked up behind bars are hideously dangerous and that the lenient measures taken by 'out-of-touch' prison and probation practitioners and arrogant correctional experts irresponsibly expose the public to risks of victimisation. On the other hand, risk is also employed in many circumstances to enhance liberal standpoints on imprisonment policies. In defence of the value of the rehabilitation of prisoners, for example, risk logic proves to be 'friendly' and contributory to the revival of the very project which used to lie at the centre of liberal penalty.¹ Thus it engenders the query as to whether it is pertinent to view risk imaginaries as a distinct category, as opposed to the populist and liberal imaginaries examined previously.

Indeed, the approaches in which risk is constructed are far from one-dimensional. In the perspective of cultural theorists, how risk is defined is never isolated from the sphere of political communication and socio-cultural construction. The evidence is that in some non-western societies risk is constructed in a dramatically different way from what is familiar among the 'risk society' theorists. Moreover, even within a western context, risk discourses in fact reflect multifaceted meanings (calculative as well as emotive, for example), which are dependent on particular political settings (Douglas, 1992; Sparks 2001b & 2001c). This also applies to the case of imprisonment. For example, in the period when British prisons were guided by penal welfare principles, the prison service - the central task of which was to offer prisoners rehabilitative treatment and promote their re-integration into the normal social order - also developed its own version of the risk conception. This was, however, clearly different from the actuarial-style risk concept that later came to underpin many contemporary forms of prisoner management and assessment practises in the same country (Kemshall, 2003: 50-52). For some commentators, what matters is not to determine whether the concept of 'risk' per se is good or bad, but to choose between the inclusive approach and the exclusionary one.²

¹ For the revival of rehabilitation and its relationship with risk management, see the discussion in Robinson (2008).

² See Hudson's (2003: 49) discussion of 'risk management' and 'risk control'.

Thus it is important to note that risk itself is subject to rather diversified forms of conceptualization. This is why it is inappropriate to reduce all sorts of risk-oriented imaginaries of imprisonment to one single category as the basis of further investigation. Such a tactic can easily create a hegemonic impression of risk imaginaries and result in ignorance of their highly diverse implications and possibilities, which are particularly worth highlighting within the current imprisonment field in which the existing patterns of risk rationales and practices have not yet achieved any substantial consensus in terms of their political righteousness.

However, does this mean that the ‘risk category’ should be totally excluded from the agenda of introspective normativity studies on the basis that no such thing exists? If so, we may lose the opportunity to shed light on some of the most distinctive aspects of the contemporary imaginaries of imprisonment, for which the concept of risk is indispensable. Indeed, these risk phenomena are admittedly diverse in their moral and political implications, and there are reasons to be cautious in accepting any grand account of the advent of an overall ‘risk regime’.³ Yet it is also important to ensure that such a significant trend within the current imprisonment realm, as addressed by those ‘grand’ perspectives, is treated properly and is not trivialised among multiple discrete risk ‘case studies’. The question thus is how we can manage to capture in terms of the parameter of introspective normativity inquiries the significance of *some particular strand* among the range of risk imaginaries and in the meantime avoid blurring the difference between it and other possible approaches to the construction of risks.

For this purpose, we need to define the term ‘risk-oriented imaginaries’ used in this chapter in a more specific manner. Firstly, when we use it, it mainly refers to those imaginaries which have a detectable linkage with the existing patterns of practises and ideas which have a prominently calculative and managerial character, one which can be perceived as distinct from the mainstream liberal or populist routes. Secondly,

³ See O’Malley’s (2010) discussion of different approaches (the ‘risk society’ approach and the governance approach) to risk studies.

within this range of risk imaginaries, we will try to focus on a few examples which are the most influential within the custodial sphere. However, it is worth noting that this strategy in circumscribing the subject-matter does not determine in advance that the examples of ‘risk-oriented imaginaries’ examined in this chapter share the same ‘logic’ and are inherently coherent with each other. The investigation we will carry out is in its nature inductive instead of deductive. It by no means downplays the pluralistic aspect of risk phenomena, but simply seeks to concentrate on some representative cases, with a view to illuminating their implications for the emergence of those new features of the contemporary normative landscape within the imprisonment field that are generating concerns among the ‘new penology’ and ‘culture of control’ theorists. Such considerations do not necessarily make the definition of the subject-matter and the choice of specific examples close-ended; as we will make clear in the later sections, the performance of introspective normativity within those risk imaginaries has multifold facets which, compared with the liberal and populist imaginaries, will allow us to shed light on its particular normative predicament and its reformatory possibilities within the contemporary imprisonment field.

In the rest of the chapter, we will first identify three cases of risk-oriented imaginaries which are prominent at different functional levels within the British custodial systems, and then to offer an overview of how they are constructed individually in relation to the circumstances of imprisonment practice. Following that, we will try to advance the analysis of those risk-oriented imaginaries in terms of the perspective of introspective normativity, and to evaluate the quality of their normative performances in terms of their nihilistic/innovative tendencies in addressing the post-universalist circumstances.

III. Overview

Prisons are associated with risks in a number of ways. In the first place, their basic operation – enforcing incarceration on those who are not willing to be there – means that, compared to other social settings, they are more susceptible to the risks of

causing physical and mental harm to their inmates. In the overview of the situation of British prisons, we have already noted that a good proportion of prisoners are suffering from mental disorder problems and that there are also high rates of suicide and self-injury among prisoners.⁴ Secondly, as the key institution fulfilling the tasks of crime control and offender rehabilitation, the prison itself plays a critical role in managing the risks of crime for society in general, as well as the risks of individuals re-offending. Though it is clear that prisons have always engaged in the task of dealing with those different types of risks that are associated with their operation, the construction and conceptualization of risks were for a long period subordinate to the leading paradigms of imprisonment. For much of the penal welfarist period, for example, the rationale of correction and integration in effect offered a holistic perspective for associating the social causes of offending, individualised treatment and the minimization of the risks of individual re-offending and criminogenic social environments. Yet, in the account of welfarist penology, the reduction of risk is not supposed to be the foremost - let alone the exclusive - end of the prison system, nor do the risk discourses acquire any outstanding status of self-referential justifiability. But things have changed dramatically since rehabilitation as an overall penological ideal was discredited and the 'what works' idiom started to exert a massive impact on the criminal justice realm. From the 1970s onwards, commentators were observing a marked expansion of risk discourses within various sectors of the prison service. Notably, they have already become one of the major organising principles and criteria of assessment for the practices of imprisonment. And, as we will discuss at greater length shortly, in many respects they are no longer appropriate within any of the frameworks of the traditional paradigms that offer guidelines and general directions to the operation of incarceration. It appears that risks do not only govern the concrete technical procedures in pre-assessing and classifying prisoners upon their admission, organising the routine activities within the institution, designing prisoner training programmes, setting up parole conditions, but they also have an ideological function: where 'risk' is established, the corresponding measures seem to attain a certain self-validating effect, despite their possible violation of wider values and normative ends espoused by traditional penal ideals. In many cases, an attempt

⁴ See the more detailed discussions in Chapter 1 (II.ii). Also see Liebling's study on risk and prison suicide (Liebling, 2008a & 1995).

to maintain order and prevent ‘catastrophic’ happenings (ranging from prison riots and prisoner suicides to serious re-offending of released prisoners) is crucial to risk calculation. In the face of such a mentality, the consideration of enhancing the rehabilitation effect in a holistic way, promoting the integration of disadvantaged social sectors, or even creating livelier and less stiff prison surroundings is likely to be barred on the basis of risk calculation, notwithstanding the benefits that those measures might hopefully produce in advancing broad and long-term social goods.

Therefore, within the contemporary imprisonment sphere, where there are no longer any overall penal ideologies that are able to hold the normative threads in a consistent and coherent way, the risk-based imaginaries have also shifted from their former secondary and instrumental status towards one which undertakes ideological and moralising tasks. Yet, beneath the ubiquitous resort to ‘risk’ in organizing current custodial practices, the concrete approaches to the management of risks and implementing specific risk schemes are far from uniform. For some commentators (e.g. O’Malley, 2010), it thus appears to be more appropriate to address these risk phenomena in the penal sphere via a more case-specific route, such as governance research, rather than assume there is one single overarching risk regime. This is also where risk-oriented imaginaries clearly differ from the traditional paradigms of penological ideals. The latter are in principle integrated in terms of certain hierarchical value orders which link the various sectors of the custodial scheme together, whereas the application of risk evaluation tends to individualise and further fragment them. As we will show below, ‘risk’ imaginaries do not result in any organic connection that unites and governs every one of the individual aspects of imprisonment under our examination, except for the general ideological concept of ‘risk minimisation’. This feature also makes risk-oriented imaginaries rather distinct from other forms of contemporary penal imaginaries, such as the liberal and populist imaginaries of imprisonment. What the latter two have to deal with is their profound incapacity to extend the validity of their normative visions beyond their boundaries of allegiance (for example, liberal approaches to imprisonment are hardly going to be appreciated by the tabloid media editors and their audiences, and vice versa). In the case of risk imaginaries, by contrast, the appeal to ‘risk’ prevention and minimisation

seems to be in a better position to receive universal recognition in a post-ideological context, but they demonstrate a noticeable shortage in offering a definite and systematic approach to uniting different parts of the custodial regime and representing their political and moral implications in an integral and unambiguous way.

The aforementioned characteristics of risk-oriented imaginaries mean that we need to adopt a particular analytical strategy in the overview section. Firstly, we will start from a few specific uses of risk construction within the contemporary imprisonment field and avoid presupposing that those applications obey any single kind of political implications. Secondly, we will try to probe into the concrete mechanisms, in each case of risk construction, by which these risk imaginaries are convincingly established. On that basis, we will then try to resolve the issue whether there are any transferable features in each of the selected cases which may help us to identify a particular 'style' in constructing imaginaries of imprisonment.

There are three particular aspects of imprisonment that have been chosen for the purpose of illustrating the construction of risk imaginaries. They are the risk-based imaginaries of the general purpose of imprisonment, risk and prisoner rehabilitation, and risk in prison management.

i. Prison as An Instrument for Managing Crime Risks

In the following paragraphs, we will try to examine how risk-thinking has contributed to the patterns of understanding of the general purpose of imprisonment. Within the rehabilitative framework, the prison was mainly imagined in the light of individualised correction and social re-integration. As crime was often considered as being the result of social pathologies related to the process of modernisation and urbanisation, its causes were then identifiable and changeable. In the meantime, the development of positivist criminology was also producing the necessary knowledge and the theoretical tools required to sustain the progress of prison-based rehabilitation. In this perspective, the task of prison is also commonly associated

with the fulfilment of broader social democratic goals, especially those aiming to promote the integration of disadvantaged and marginalised social sectors. In other words, rehabilitation is seldom conceived as an isolated function of prison, but is linked to a holistic social improvement ideal, which serves as the ultimate basis for justifying the coercive and intrusive dimension that is unavoidably involved in the rehabilitative scheme. Therefore, it is important to note that there are normally a set of wholesome positive moral and political designs underpinning the rehabilitative imaginaries of the purpose of incarceration.

The characteristics of an adherence to a holistic moral horizon can be also observed in the other classic approaches to determining the purpose of imprisonment, such as the retributive theories, and even in those reflexive perspectives which seek to uncover what prison actually does within the social control system instead of its officially stated objectives. For the latter (i.e. the critical evaluation of the function of prisons), it is still necessary to build its own normative grounds in order to level criticisms; that is, it normally requires an affirmative vision of what are the right aims that prisons ought to serve, so that the factual situation can be assessed in terms of how much it has deviated from them.

The most commonly observed risk-based approach to the understanding of the purpose of incarceration, however, differs drastically from the aforementioned imaginaries in terms of its substantive orientation as well as its relationship to broad moral and political horizons. Over the past four decades, the ‘risks’ being constructed within the British penal realm have to a great extent amounted to the risks of victimisation that are faced by the general public.⁵ As for the task of prisons, the risk perspective seems to resonate well with the punitive view expressed by the populist media; that is, incarceration should first and foremost be the means to make offenders ‘pay’ for their criminal deeds and prevent them from bringing crime risks into the community to the greatest possible extent. But it is not difficult for us to see

⁵ In the following discussion we will also deal with different types of risk construction, particularly the ‘risks’ to prisoners and prisons per se. Yet, within the current political atmosphere and penological discourses of the UK, the risks in question overwhelmingly reflect the security concerns of the general public or mainstream society.

that the contemporary risk-oriented construction of the purpose of imprisonment reaches far beyond this purely security-centred and vindictive rhetoric. In the latter case, as we discussed in the chapter on populist imaginaries of imprisonment, there are often an emotional element and an appeal to 'justice' (though it is usually depicted as expressing ordinary citizens' 'healthy' moral instincts and being at odds with the concepts accepted by the academics and penal elites). In the construction of the risk-oriented imaginary, on the contrary, the emotional or moral facets have been rendered secondary. In respect of operating the custodial institutions to meet the requirement of reducing the crime risks faced by the public, what matters for these risk imaginaries is their efficiency in identifying, categorising and controlling the various risk factors related to offences. This is a requirement which appears to be better met by the collective and actuarial style of risk calculation than the conventional measures based on a clinical-style diagnosis of individual offenders. As a result, the traditional penological factors such as culpability, fault and moral responsibility become less important; the goal of the transformation of offenders gives way to group management, 'dangerousness' classification and deviance regulation. The operational goal of imprisonment then increasingly focuses on containing risky personnel, reducing their chances of re-offending by imposing incapacitation on them. Imagined in this way, prisons largely resemble human 'warehouses', whose inmates are mainly conceived of as risk-carriers instead of subjects with rights and autonomy.

Feeley and Simon (1992 & 1994) identified such phenomena as part of the advent of a 'new penology', which shifted its focus away from the individual offender-oriented welfarist penology towards systematic group management strategies that quantify, assess and deal with the risks of prisoners in terms of their collective attributes. This logic of new penology gives more weight to the use of actuarial techniques in risk calculation than to the discretion of penal professions in charge of prisoners' correctional programmes. In short, it is 'neither about punishing nor about rehabilitating individuals. It is about identifying and managing unruly groups' (1992: 457). Not surprisingly, such a presumption goes in accordance with the prioritisation of the prison's incapacitation function over its role as a rehabilitative institution.

It is worth noting that this sort of risk-centred imaginary of the purpose of imprisonment, as described above, scarcely takes such an explicit form in official statements or appears as such within the forum of political debates. Its dispassionate and calculative character is ingrained, instead, within the institutional practices and the logic underpinning them.⁶ In fact, if it is disclosed thoroughly to the populist audience who accept the concept of ‘risk’ in a punitive sense, it is likely to be perceived as another sort of cold and distanced professional wisdom, which fatally lacks the moral sentiments necessary to comprehend the role of prisons.

However, it is important to note that such imaginary is neither hegemonic nor without its competitors in the contemporary imprisonment field. As Hannah-Moffat (2005) observes, the risk/welfare binary, which was palpable in the ‘new penology’ style usage of imprisonment, has been destabilised by the emergence of a number of new risk management schemes and rationales which render it possible to fuse risk construction with elements of welfarist interventions. One of the prominent examples in this regard is the development of the ‘risk-needs’ categorisations and the management strategies based on them (about which we will go into greater detail in the following section). Hannah-Moffat argues that such development has made the field of risk knowledge more ‘fluid and flexible’ and capable of supporting ‘a range of culturally contingent penal strategies’ (2005: 30). Whereas the ‘new penology’ imaginary mainly conceives its subject according to certain static risk categories (low, medium, high), on the basis of accumulated historical factors that mostly cannot change, the new ‘risk-needs’ schemes seek to reassert the welfarist premise that the offender can change and can be rehabilitated, by integrating ‘intervenable needs’ into the risk assessment technologies. Thus, unlike the actuarial model of risk construction, the new generation of risk techniques are inclined to produce the ‘dynamic and transformative’ risk subject who is amenable to re-integrative measures. Accordingly, the ongoing development of such techniques can be viewed as containing a wide range of possibilities in terms of exploring and materialising the

⁶ Thus such styles of risk calculation and their influence on penal practices are more often reflected in sociological studies of the field rather than in directly stated institutional aims.

diverse political implications of risk, which cannot be exhausted by one single risk management scheme (Hannah-Moffat, 2005).

ii. Risk and the Rehabilitation of Prisoners

Whereas the operational goal of prisons can be defined according to the risk-based imaginary described above, this constitutes merely one of the specific examples of how the concept of risk has come to permeate the contemporary understanding of imprisonment. As we have tried to emphasise in the preceding paragraphs, there is no single type of risk construction. Even in the custodial realm, risk imaginaries are multifaceted and they are by no means coherent with each other in terms of their substantive content. As for the general purpose of imprisonment, we have identified one risk-centred vision which places incapacitation and the group management of the risks posed by offenders over the traditional penal ideal of rehabilitation and transformation. However, risk can also play a role within those prison sectors which still attach great importance to the task of the rehabilitation of prisoners. In the following paragraphs, we will mainly describe how the dominant risk-oriented imaginaries are configured in relation to the rehabilitation of prisoners. The treatment of prisoners who have been convicted of sex offences will be discussed as a concrete example to illustrate some of the typical features of risk thinking within the sphere of rehabilitation.

As an overall paradigm of penal practice, rehabilitation has declined markedly since the 1970s. Though the situation varies between different prison systems within the UK (for example, the Scottish prison service has preserved a much stronger rehabilitative tradition than its English and Welsh counterparts), for most commentators, it has lost the ideological power to guide the custodial institutions. However, it is worth clarifying that most of these criticisms are concerned about the plausibility of achieving any effective outcome of rehabilitation rather than its value per se. Moreover, at the practical level, the rehabilitative element can hardly be dismissed as easily as it is at the ideological level, since it has largely been incorporated into the professional habitus of those who manage various sectors of the

custodial institutions. Unsurprisingly, even under the conditions where ‘nothing works’ discourse was most prominent in the UK, the rehabilitative element was not entirely absent within the realm of the daily management of prisoners and the arrangement of routine order inside prisons.

This is also reflected in the recent literature which engages in discussion about the survival or revival of rehabilitation (Robinson, 2002 & 2008; Steen and Bandy, 2007). In the view of these commentators, the practices of rehabilitation have not been driven out by the rise of punitive penal politics. But they also do not remain in the same shape as they used to be. Many aspects of the contemporary configuration of prisoner rehabilitation have been adapted to the post-welfarist penal circumstances. It is in this context that ‘contemporary rehabilitation has evolved by learning to speak the language of risk’ (Robinson, 2008: 434). As we shall see in a moment, the patterns of risk thinking are capable of tremendously transforming the imaginaries of rehabilitation and they demonstrate clearly how the logic of risk also permeates the conventional practical sectors of the prison system, apart from changing the orientation towards the understanding of its general purpose.

One of the most prominent changes that risk has brought into the sphere of prisoner correction concerns the ‘social vision’ of the conventional rehabilitative paradigm. Under the social perspective of prisoners’ reform, there is a crucial task for the rehabilitative programmes to address the social conditions and individual needs of prisoners that are vital to their adaptation to a useful and law-abiding life style and their desisting from re-offending. In the risk-oriented imaginary of rehabilitation, however, its ‘social’ aspect is constructed quite differently. The central task is no longer to understand the linkage between the social environment and the causes of crime, or the effect of rehabilitation, but to determine the concrete and calculative factors relating to prisoners’ profiles which can be used to predict the probability of their re-offending. Accordingly, the rehabilitative measures are acknowledged and adopted only under the condition that they are proved to be able to reduce the risks of crime. As for those corrective measures which are supposed to benefit the well-being of prisoners but which do not necessarily have any impact on reducing re-offending

risks, they are likely to be dismissed from the risk-focused rehabilitation agenda as counter-productive.

Let us now consider the risk-need-responsivity model (RNR) and particularly the concept of ‘criminogenic need’, which have become increasingly influential in the realm of prisoners’ assessment and treatment. The major framework of the RNR model was established by several Canadian scholars (e.g. Andrews and Bonta, 2003; Andrews, et al., 2006; Gendreau and Andrews, 1990), but it has also attained popularity in the UK (and in a number of other jurisdictions, including New Zealand, Austria and Europe). This model characteristically combines risk logic and the requirement of effective rehabilitation. Its key idea is the need to identify and adopt rehabilitative measures which are linked to the reduction of risk in crime whilst excluding those which are ‘irrelevant’ to such an outcome. Briefly speaking, the model includes three principles, and each of them can provide guidelines for the treatment of prisoners. The risk principle concerns the classification of offenders according to the levels of risk of their re-offending. If they are categorised as carrying the highest risk, they will be referred to measures of the strongest intervention; if the risks are low, they will be considered for minimal treatment or may even be exempted from it. The need principle distinguishes the ‘criminogenic need’ from the ‘non-criminogenic need’ and determines that only the former should be considered as the proper target of the rehabilitative intervention. ‘Criminogenic need’ is defined in accordance with ‘dynamic risk factors’, that, is the changeable factors associated with the risk of re-offending (e.g. substance abuse, problems with leisure activities, antisocial personality patterns). Those factors which are not proved to be useful in the reduction of crime risk are suggested to be removed from the agenda of rehabilitation so that the resources can better target the criminogenic need. For example, the traditional treatment programmes usually include the task of dealing with psychological depression among prisoners and see its improvement as part of the rehabilitative goal. But, in the risk-centred imaginary, this basically belongs to the category of non-criminogenic need and thus is only secondary to the rehabilitation target. The responsivity principle suggests that the treatment should match the characteristics of prisoners (particularly their learning skills and their

motivation to attend the programmes) so that its rehabilitative effect can be maximised.⁷

We can see that the NRN model has constructed the realm of prisoners' rehabilitation in a way such that every aspect of it can be defended on the basis of risk consciousness. But, obviously, even though the element of correction of prisoners is preserved within this vision, it is supposed to serve the aim of risk reduction, not vice versa. For some commentators, this revival of rehabilitation is at the expense of concerns about the well-being of prisoners, as it is overwhelmingly on the side of public safety and risk minimisation. They also wonder 'how an approach focused on the prevention of harmful consequences to others can encourage offenders to change their own behavior in fundamental ways' (Ward and Maruna, 2007: 83). Indeed, the risk-based imaginary of rehabilitation has made great efforts to promote the evidence-provable effectiveness of the corrective aspect of prison systems, but at the same time as its seemingly science-led and value-free approach is satisfying its proponents, the 'social vision' that conventionally links the task of rehabilitation with a broader social end has markedly decreased. As a result, the instrumental dimension of prisons and their operations gets highlighted, but the goals they are designed to serve can no longer be held together as a meaningful whole, despite the existence of the general ideological cover of 'risk minimisation'.

Compared with the risk imaginary of the general purpose of imprisonment (which tends to banish rehabilitation and replace it with incapacitation), RNR-style risk thinking involves a compromise with the correctional task of custodial institutions. Nevertheless, it shares some of the critical features of the former. Apart from the restrictions on the social perspective, it also places the demand for a 'free of crime' community at the centre of its considerations. Yet the construction of such an imaginary community is by no means detached from struggles and negotiations within the political realm. The risk language, however, tends to create a world consisting of evidence, objective calculation and scientific measurement, which in effect diminishes the controversial issues such as who should be included in or

⁷ For more detailed review of the RNR model, see Ward et al. (2007) and Ward and Maruna (2007).

excluded from the ‘risk-minimised’ community and what kind of behaviour should be defined as crime or as risky activities.⁸

Another similar characteristic that the two types of risk imaginaries have in common is the impersonal and aggravated style of managing imprisonment practice. For the RNR model, the classification of risks is primarily based on pre-determined impersonal characteristics (age, gender, offending history, family circumstances, etc) rather than clinical diagnosis. The rehabilitative (or risk-reduction) effect is also envisaged according to analyses of the data of past cases of recidivism and desisting from re-offending. Compared with the classical paradigm of rehabilitation, the importance of the individual prisoner per se has diminished greatly in such imaginaries. However, in the case of the risk-centred imaginary of rehabilitation, it also creates a new role for individual prisoners, one that engenders new requirements they have to meet. As risk becomes the guiding principle for rehabilitation, its ultimate effect is supposed to be realised in each concrete prisoner who has gone through the corrective process. That means that the final task of risk reduction must be carried out by those individuals. The success of risk-directed rehabilitative programmes is then measured by whether they can transform the prisoners into risk-conscious subjects who will continue to be ‘responsible’ of managing the risks of their re-offending even after they are released into the community. In other words, each prisoner is considered to be an autonomous risk-controlling unit: she has learned to recognise the ‘alerting’ signs of the mobilisation of criminal behaviour, ascribe their management to her own responsibility and take effective measures to curb her deviant motivations and prevent them from causing any harmful results to the community.⁹ Thus the common impression of risk-oriented imaginaries that they are only interested in collective categories and aggregate calculation and tend to ignore individuals is not true. In terms of the spectrum of attitudes to prisoner rehabilitation, the risk approach may in effect impose heavier burdens on the subject of correction than traditional does liberal rehabilitation, in terms of both scope and scale. However, in creating risk-conscious subjects its focus is excessively

⁸ We will return to this point in the further discussion in the next section of the chapter.

⁹ It is in the case of sex offender management, as we will discuss in detail shortly, that such features of risk-dominated rehabilitation can be detected most clearly.

instrumentalist and outcome-oriented. What matters is not accurately capturing the subtle personality composition of the prisoner or identifying the aetiological factors of her deviant disposition, but planting the particular behaviour customs in her which are pertinent to fulfilling the risk minimisation task, in spite of the fact that such customs may be connected to her personality and her integral social needs only in a loose and external way.

The characteristics of the risk-oriented imaginaries of rehabilitation that have been addressed above can be observed clearly in the realm of sex offender treatment in prisons. In the case of the UK (as well as several other countries including Canada and the US), risk assessment has become a precondition for treatment programmes. The assessment instrument Risk Matrix 2000 (RM2000) is generally used in the prison and probation service to predict violent and sexual re-offending. Such practices reflect well the RNR principles, as they widely use actuarial techniques to classify sex offenders according to the risks of their relapse and then decide the follow-up treatment level. The classification of sex offenders overwhelmingly concerns the probability of their re-offending in terms of group characteristics (offending history, conditions of personality disorder, etc) and is strictly defined in terms of the outcome measurement and allocation of resources for treatment. As a result, '[g]one are the days when insight and understanding were the primary goals of assessment' (Grubin, 2004: 91). The treatment programmes are mainly designed to intervene in the criminogenic needs or dynamic risk factors of prisoners convicted of sex offences. Those factors are defined as changeable and constitute the main target of treatment programmes. They include the client's attitude of denying or minimising her offence, dysfunctional thinking patterns, lack of victim empathy, deviant sexual fantasies and arousal, low self-esteem, intimacy deficits, attachment problems, assertiveness difficulties, management of negative emotions and problem solving deficits (Beech and Fisher, 2004). The treatment programmes usually take the form of consecutive and circular modules and admit their clients according to the risk-category that they belong to. In the process they will learn to address those risk factors step by step until they become competent enough to be 'masters' of the successful self-management of relapse risks. In those modules the cognitive-

behavioural approach is quite prominent. The attendants firstly face the crucial task of learning how to think normally in respect of sexual relationships and sexual norms; it is supposed that only when they accept a non-deviant thinking pattern are they capable of making changes to their behaviour.

We can note that the risk perspective that is employed in sex offender treatment programmes touches very intimate dimensions of an individual's social existence and the realisation of her personal values and pursuits. For example, one's sexual fantasies are normally thought to belong to a deeply personal sphere, and to intrude into them goes quite against the common moral perceptions of contemporary society. But once this sphere is linked to the demands of the risk management of sex offences, it immediately becomes a *technical* spectrum, which is subject to a number of manipulative tactics. The same thing happens to other risk-related aspects of human activities such as relationships with the other gender, knowledge of and attitude towards one's self, attachment and intimacy, etc. Those realms are admittedly confusing to people at all times and inquiries into them have never proved exhaustive. Whereas the traditional corrective paradigm sought to offer an integral normative vision based on the ideal of social inclusion and solidarity, in the case of risk imaginaries, those realms are never constructed as *a meaningful whole*, though they may be integrated into certain coherent risk management paradigms. On the contrary, they are dis-organised into separate pieces to be governed by respective risk-management strategies.

A case study in a Canadian sex offender treatment programme (undertaken by Lacombe (2008)) may well illuminate this general tendency in such imaginaries. The researcher had a role as a participatory observer in the operation of this programme and found that fantasy management formed a significant task for the attendants to perform. A clear distinction was made between 'good fantasy' and 'bad fantasy', as part of the cognitive-behavioural therapy, since managing the risk of committing a sex offence needs to start from managing the deviant thoughts. Thus, '[a]s they train to scrutinize their fantasies to identify the bad fantasies and interrupt them,' as it was documented by the researcher, 'inmates are carefully instructed to create good ones.

They are encouraged to set a “mood” by “imagining a candle light dinner”, including “intimacy” and “foreplay” by describing different “scents, smells and touches” and communicating to their partners clearly by “expressing feelings” (Lacombe, 2008: 69). In another case, the therapist tried to urge a 57-year-old attendant to shift his sexual fantasy target away from 16-17 year old girls (‘At your age the correct age for you is a 35-year-old woman’ - Lacombe (2008: 68)). It is obvious that under normal conditions it is simply impossible to set up standards for fantasies. But under the governance of risk imaginaries, they seem to enter into a particular sphere which is detached from the common normative visions and moral controversies, a world characterised by clearly defined boundaries of right and wrong. As this sphere is only supported by the risk logic and its derivative standards, it is largely independent from the more comprehensive ‘social’ vision and its holistic normative foundations.

Furthermore, the sex offender treatment field also illustrates how the individual prisoner is imagined in the light of her own role within the risk scheme. As the aim of the treatment shifts from the prospects of complete cure to risk management, the prisoner is required to carry out effective self-control. She needs to master sufficient knowledge about her ‘crime cycle’ and intervene as soon as the ‘warning signs’ emerge. Most importantly, these skills must be preserved as long as the risk of re-offending exists. ‘In short, self-monitoring must become second nature for them. The crime cycle and relapse prevention plan instil in the offender an awareness that he is *always at risk of re-offending*’ (Lacombe, 2008: 72). In short, in this risk-oriented imaginary, the thorough rehabilitation and moral integration of the offenders is not a feasible target of the treatment; prisoners cannot be made ‘normal’, but they can be trained to adhere to the behaviour model that suits the risk-minimisation goal and take personal responsibility for it. What matters is the outcome.

iii. Risks to the Prison and Prisoners

Both of the previous cases of risk-oriented imaginaries are concerned with the reduction of the risk of crime for the public and the mainstream society. In the field

of imprisonment, however, risks may also be identified as affecting prisoners and the prison per se. For example, the prison may engage in enterprises which are designed for the purpose of providing meaningful activities for the prisoners and facilitating the effect of rehabilitation. Such pursuits inevitably involve various types of risks to the prison as well as the prisoners. Apart from the risks which are normally faced by commercial enterprises (product liability, product safety, health and safety at work and changes in legislation), they may also involve risks which are particularly associated with the prison environment. For example, when the prison enterprises are concerned with the production of printing and publication materials which will be seen by the public, especially children, the working process may engender opportunities for prisoners to insert inappropriate materials (see the guideline for managing risk in prison enterprises, Prison Service Order No.4101). In such cases, the prison may face the risk of being subject to legal action and even political disputes. On the other hand, prisoners are also a very vulnerable group of people. They tend to have more chances than those living outside the prison of having negative life experiences, especially those associated with suicide and self-injury. To manage those risks are vital to the maintenance of the custodial institution itself as well as the accomplishment of its operational goals. Thus it is not surprising that practices within this realm of imprisonment are also reflected in the risk-oriented imaginaries.

In respect of managing these risks to prisoners and the prison, the calculative model is similar to what we have discussed in the previous sections. It makes use of group data to categorise risks and on the basis of this it sets up concrete guidelines, responding strategies and various check-out lists for relevant practitioners within the custodial institution. For example, in the light of dealing with risks in prison enterprises, the prison service administration in England and Wales has set up detailed categories of risks related to the venture (product liability, environment safety, patents and trademarks, etc). Once particular risks get identified, they are then assessed and ranked in terms of their impact and probability. 'Documentation should be kept detailing the risks identified, and the associated rank allocated to each of them. The risk assessment is intended to identify risks specific to the sale of goods or

services and to allow an opportunity to set up the relevant controls' (Prison Service Order No.4101, 1.1.6). This work then provides a basis for designing and specifying various risk-minimization strategies, ranging from the separation of duties between different sections of the system to regular updating of product-related legislation.

The management of risks to prisoners also contains a marked actuarial element. A typical example is the management of prisoner suicide and self-harm risks. Based on the statistics of recorded incidences of suicide and self-harm, the prison service is able to identify the high risk groups of prisoners and occasions (e.g. the first night after the prison reception) and take corresponding measures to minimise the risks. Recalled prisoners, for example, are taken as a high risk group of suicide and self-harm on the basis that '[s]tatistics on apparent self-inflicted deaths show that there was 1 such death in 1996 and 1 in 2001, but then 5 in 2002, 11 in 2003, 9 in 2004 and 6 in 2005. In percentage terms, apparent self-inflicted deaths involving recalled prisoners represented 8% of the total number of deaths in 2005' (Prison Service Order No. 2700, Annex 4L). Accordingly a host of strategies can be directed to deal with this particular risk group, including staff support (informing those prisoners of the opportunities for appeal and re-release), increased opportunities for them to contact their family and partners, access to personal officers, etc.

It can be noted that the risk-oriented imaginary within the realm of minimising risks to prisoners and the prison shares the same instrumentalist character as the other two cases discussed before. But as the objective of risk minimisation shifts from the risks to the members of the public and the community to those faced by prisoners and the prison, it also generates certain difference in its normative implications. In cases where the public and the community are taken as the beneficiaries of the minimisation of crime risks, since under most conditions they do not have any direct and vivid presence within the custodial regime, protecting their interests thus forms an abstract and exterior principle for the functioning of the prison system. Whereas when the custodial power is most directly linked with the prisoners, such risk-oriented approaches tend to be indifferent and fail to respond to their idiosyncrasies and concrete needs, which can hardly be captured in terms of the static risk-based

categories. As we noted in the former two sections, the risk imaginaries are mainly targeted at ‘managing’ rather than ‘understanding’ those who are subject to their governance. And this is closely connected with their a-social vision and strategies of responsabilisation.

However, in those conditions where the prisoner becomes the target of risk concerns, the risk model can respond better to its clients, as they (the prisoners) are not far away from its exercise but instead are in a position to interact with the effect of risk minimisation. Despite the fact that most of the risk categories are pre-determined, they can adopt insights from the dynamic interaction between the prisoner and the prison practitioners and make the risk guidelines and ‘check-out’ lists reflect the broader and more in-depth aspects of prisoners’ needs and their humanity. This may explain why the prison service instructions in relation to minimisation of the risk of suicide and self-harm turn out to demonstrate genuine interest in understanding those quite specific aspects of prisoners which are related to their vulnerability. In this respect, the instrumentalist facets of the risk imaginary tend to be moderated by the more individual-oriented concerns and possibilities of a less control-dominated risk perspective. Our discussion about this particular dimension of the risk imaginaries of imprisonment will be taken further in the next section.

IV. Evaluating the Performance of Introspective Normativity

In the previous section, we have examined some representative cases of risk-oriented imaginaries in the realm of imprisonment. Through this overview we have also touched on the normative aspect of the constructions of risk in three different custodial spheres. It has also confirmed the view, as we discussed in the introduction to the chapter, that the logic of risk is by no means value-free.

The aim of introspective normativity analysis, however, is not to judge its value-orientation according to certain exterior standards (whether they are civil liberty, human rights, social democratic ideals or utilitarianism), but to uncover and assess how it performs in respect of building its particular normative reality within the

spectrum of penal imaginaries. In other words, it is concerned with the quality of its normative introspection in terms of the dynamic construction of risks, and it seeks to shed light on whether it forms an effective/productive approach for confronting the normative predicament within the post-universalist imprisonment field.¹⁰

In following paragraphs, we will try to apply the perspective of introspective normativity to analyse the case of the risk-oriented imaginaries discussed in the previous section. Since we are aware of the differences in risk construction among those cases, we will start from an examination of some of the general patterns of normative performance that are detectable in each of these cases and try to expose how they may be assessed in terms of the opposition nihilism/innovation in their normative performances. Following that, we will try to shed light on the possibilities of developing some innovative aspects of risk thinking with a view to improving its normative performance within the contemporary field of imprisonment.

i. Subordination of A Holistic Normative Perspective

In our discussion of the risk-oriented imaginaries about the purpose of imprisonment and the rehabilitation of prisoners, we have already noted that the normative visions implied in them are largely disassociated from the pursuit of holistic social aims. To define the goal of imprisonment in terms of incapacitation-style risk management is not simply a shift in the direction of the function of prison, but implies an essential departure from the faith in establishing meaningful moral linkages between the prisoner and society. The former is identified merely as a set of variables to be calculated within the overall management scheme that aims to create favourable risk-circumstances for the community. Accordingly, the moral depth of the life of prisoners and its connection with possible normative ends for the whole society are largely abandoned and become subordinated to the restrictive aim of minimising the risks of crime.

¹⁰ See the more comprehensive explanation of our methodological perspective in Chapter 2.

Even in those places where the rehabilitation of prisoners is acknowledged as being the goal of the imprisonment practice, the risk-oriented imaginary, as examined in the preceding section, has succeeded in building a distinctive normative vision different from that based on the ideal of social integration. Since the central task of rehabilitation is defined in terms of ‘criminogenic need’, prisoners’ interests can only be considered when they are connected to the risk-management purpose. In this perspective, priority is placed on the requirement of effectiveness in resource allocation and cost-benefit calculation, and is seldom given to the understanding of the prisoner’s fundamental needs and her moral relationship with the society and the polity which she inhabits. This can be seen most clearly in the case of sex offender treatment, which in effect imagines the group of people who embody sex offence risks as permanent ‘strangers’ to the community: they are taught to develop risk consciousness and skills of management, but the prospects of genuine moral integration are entirely lacking.

We may recall the ‘detachment’ model of normative performance that we have identified in Chapter 2 (III.iii.d). It provides a lens for understanding the dynamic of normative construction that admits the inescapable loss of universal normativity and seeks to come to terms with it. In this model, what is valued is the regained freedom following the detachment from the faith in and pursuit of any ‘thorough’ moral end; and it is the constant ‘contact’ with and subsequent ‘escape’ from the heavy authority of conventional universal ideals that gives life to its particular normative reality which has a deeply ‘light’ character. We also found that this model is more likely to be found within the sphere of the individual’s life styles than within the penal realm. The obvious reason is that punishment is among the most restricted and justification-demanding powers of the state, and it is hard to imagine that it can continue to exist in the vacuum of universalist moral discourses. Thus we can observe that the contemporary liberal and populist imaginaries both seek to offer their own moral discourses to support their desired forms of the exercise of custodial power and the ‘detachment’ model thus seldom applies to them.

Yet, when it comes to the risk-oriented imaginaries of imprisonment which have been examined in this chapter, the ‘detachment’ model seems to be able to cover some of the key facets of their normative performance, as the risk-penetrated normative reality in effect acquiesces in the fact that it is not feasible to pursue a holistic approach to the moral integration of prisoners. Instead it favours the more realistic endeavour of *management*: managing the crime risks they carry rather than extinguishing them, managing the potential harm they may suffer in the prison and managing the increasing security demands from the community. At the centre of such a vision is a compromise: since there is nothing that can be done to rebuild the consensus on the ultimate moral foundations of imprisonment, the best thing we can do is to devote our efforts to the task of meeting the realistic and relatively uncontroversial demand for harm prevention and management. As a result, in the case of the risk-oriented imaginaries of imprisonment, the crucial supportive element of ‘regained freedom’ is simply absent. This would undoubtedly amplify the inherent problem of the detachment approach to the penal realm and determine that risk-oriented imaginaries need to employ other strategies to enhance the strength of their normative reality and remedy the vulnerability that may result from its character as a compromise.

ii. Risk as An Ideological Shelter

One of the strategies used to remedy the shortcomings of the detachment approach is the use of risk as an ideological cover for the problems associated with imprisonment. It prescribes the minimization of crime risk as the self-evident end and prior task in arranging various sectors of the custodial regime. On the condition that other interests and considerations (such as the welfare and rights of prisoners) are involved as well, their fulfilment is made subordinate to the requirement of risk management.¹¹

¹¹ We can see this typically in the risk-need-responsivity model. In fact, the ideological function of risk discourse reaches far beyond the sphere of imprisonment and forms one of the dominant characteristics of contemporary societies.

Despite the fact that risks are subject to multiple types of construction and their political implications may be hugely different, most risk discourses tend to downplay the diverse possibilities within their subject-matter and manage to create the impression that they represent the single ‘objective’ approach to handling the issue. In the case of the risk-oriented imaginary of rehabilitation of prisoners, for example, the massive use of collective data and actuarial models of calculation successfully sends the message that they represent a dispassionate technological approach to fulfilling the irreproachable purpose of reducing the crime risks faced by the community. Under this ‘politically correct’ shelter of risk minimisation, it thus acquires an advantageous status in its attempts to justify its unconventional measures for treating prisoners and to direct the critical public gaze away from their problematic moral and political assumptions.

We can see that in many respects the strategy of using ‘risk’ as an ideological shelter resembles the ‘exterior normativity’ approach employed by some contemporary liberal imaginaries of imprisonment, as has been discussed in Chapter 3 (II.i). In that case, different exterior normative sources – ranging from human rights discourses, European court decisions to the cultural values of local jurisdictions – are brought into the current liberal imaginaries of imprisonment so that the traditional liberal penal values can adhere to some politically uncontroversial anchor without being washed away in the ebb of the decline of penal welfarism in particular and universal normativity in general. In the case of risk-oriented imaginaries, the ideological function of risk minimisation is not connected with the task of reusing some endangered traditional value, but is a means to remedy their detachment from the pursuit of universal normativity. Notably, the exterior normativity approach is based on a closed normative vision: its boundaries are static and lack any interaction with other normative angles. Accordingly, the ideological use of risk can hardly provide a lively sphere of normative performance which might remedy the essential insufficiency of universal normativity within the imprisonment field, but tends to consolidate the detachment model. Just like the exterior normativity approaches applied within the liberal imaginaries, it results in normative closure in constructing the penal imaginaries centred on risk.

iii. Re-creation of Isolated Normative Reality

Apart from the ideological function of risk, the risk-oriented imaginaries of imprisonment also involve another type of normative performance that seeks to tame the impact of the detachment from universal normativity. Whereas any holistic perspective is abandoned in the risk approaches, this does not mean that the operational sphere of risk logic is entirely instrumentally constructed. On the contrary, risk imaginaries also manage to build their respective normative realities in those varied settings where risk logic takes concrete forms.

For example, in the case of sex offender rehabilitation, we can notice that the risk-oriented imaginaries have created a micro-world in which the norms and rules of behaviour and thinking-patterns are established in accordance with the particular end of risk management and are to a large extent detached from the broader moral concerns shared by members of civil society. What is characteristic of this world is that it not merely operates in these instrumentalist ways, but develops its own normative understandings about the nature of social (particularly gender) relationships, good/bad selves, negative/positive fantasies and proper/improper ways of solving personal problems. Notably, what is included in this corrective perspective reaches far beyond the commission of sex offences per se, and covers a broad range of the prisoner's personal life and behaviour models. As one of the observers of the sex offender treatment programme commented, '[t]he exercises and techniques used to develop the crime cycle and relapse prevention plan aim ultimately at making offenders recognize that their criminal identity as sex offenders constitutes the pivot around which all other aspects of their personality revolve' (Lacombe, 2008: 72). Thus the risk imaginary in effect establishes a particular moral universe, in which the structure of norms and values is governed by the essential goal of managing the deviant sexual impulse, effectively intervening in the 'crime cycle' and reducing the chances of the client's relapse in her post-prison life.

The particular normative universe that is constructed in such risk-oriented imaginaries is, however, largely isolated from the moral forum of normal society. Whereas the latter is inherently diverse and plural under modern conditions, the risk-centred vision is basically affirmative, static and coercive. This feature is revealed very well in the case of fantasy management which we discussed in the previous section. In the risk-centred perspective, the proper target and content of this very private sphere is defined in a very concrete way and the prisoners are trained to follow it and to alter their old patterns of thinking and generating fantasies. Yet, as to the definition of the 'correct' fantasy pattern, there is no negotiable space because it does not take place in dialogue and interaction with different views and experiences, but on the basis of an instrumental understanding of the risk-reducing requirement.

Obviously, if such a strategy works, it is mainly because it is employed within the isolated environment of the prison which facilitates the construction of its particular structure of norms and moral conceptions. This also explains the arbitrary aspect of such normative visions: they are not to be challenged within their operational boundaries. In this regard, the isolated normative realities that are constructed in risk-oriented imaginaries of imprisonment are also closed ones. They are not only detached from the sphere of universal normativity, but are also even closed from each other, since no coherent perspective can be guaranteed if the establishment of those micro-normative universes is primarily the outcome of an attempt to meet risk-management goals in varied contexts. This characteristic of normative closure may be detected most clearly in cases where even the therapists themselves may not share the gender norms they are urging their clients to adopt: such norms only appear 'normal' in the particular risk-obsessed settings and might easily turn out to be absurd outside the training programme and the trainee groups (Lacombe, 2008: 69). In this regard, this is a great limitation of such normative performances in responding productively to the predicament of universal normativity within the field of imprisonment.

V. Nihilism and Innovation: Conclusion

The examination conducted in the previous section shows that the normative performance of the risk-oriented imaginaries under discussion has demonstrated the characteristics of normative closure. In the construction of their normative visions, the pursuit of a holistic perspective and universal normativity is dismissed; risk instead plays an ideological role while different sectors of the custodial system become the sites for various finite and isolated patterns of normative imaginaries to dominate. Under such a scheme, the opportunities of opening up to the pluralistic normative dynamics in the contemporary imprisonment field are quite limited. In fact, it remains relatively insensitive to the normative predicament of post-ideological incarceration and tends to normalise such moral insufficiency within the field.

However, we also need to be reminded of the fact that these approaches to risk imaginaries are by no means single-dimensional. The cases examined in this chapter may represent an influential trend within the current penal sphere, but the other possibilities are far from exhaustive. And they do not necessarily contribute to the nihilistic side of the normative reality constructed by the penological discourses.

With regard to this point, the work of O'Malley (2004, 2008 & 2010) has provided a good deal of insight. In his exploration of the 'uncertain promise' of risk, O'Malley contends against any monolithic vision of risk and points out that the construction of risk occurred at differential historical settings and can involve quite diverse techniques, which makes its political implications rather complex and by no means unitary. In this perspective, risk techniques is not predetermined to reinforce a hegemonic suppressive scheme, but have great potentials for being employed in a 'more optimistic, socially inclusive and constructive fashion' (O'Malley, 2010: 7). The case of the drug harm minimisation programme, which was discussed at length by the author (O'Malley, 2004 & 2008), shows that the risk technique can be used to promote the social inclusion aim by introducing a 'stakeholder politics', which allows the interests and concerns of different parties affected by the harm of drug use to be reflected and acknowledged in the risk minimisation scheme. This stands in

stark contrast to the ‘war on drugs’ strategies, whose style of risk calculation is intimately tied up with vengeance and social exclusion.

Importantly, in the perspective of O’Malley, what is currently in place in terms of risk practice is open to further innovation and ‘[t]he future can be invented’ (2008: 455). The study on this issue, therefore, should abandon ‘fatalism’ and take its responsibility to consider the ‘promise’, as well as the problems, of risk. To pursue this end, O’Malley proposes the analytic framework of governmentality, which, as opposed to the grand theory approach, draws upon the existing intellectual and political resources, such as the existing rationales of risk construction, and emphasises what is feasible within their conditions. It works as a means of diagnosing the present, but not one that merely presents it as ‘bad’ or unavoidable, as it also forms the basis for revealing the potentials of alternatives and for (re)designing such alternatives (2008: 457). And what is imperative in this undertaking is that it can be pursued in the direction of the ‘maximization of opportunities for contestation’, that is, it can become the resource for the development of alternative forms of governance that minimize domination (2008: 456). In his study of the cases of risk practicing experiments, particularly the practice regarding the drug harm minimisation programme and restorative justice, O’Malley shows how his approach can enrich the understanding about the inventive and promising aspect of risk. For instance, the drug harm minimisation programme is found to be able to develop the neoliberal ‘stakeholder’ idea in favour of the purpose of social integration; and the restorative justice approach has the effect of challenging penal experts’ dominance in the definition of crime-related risks and promoting the status of layman’s judgement. Those approaches may have their own particular worrying and even dangerous aspects, yet the aim of the investigation is to identify and make use of their constructive elements through critical examination and, on the basis of that, shed light on feasible alternatives which attune to the prospects of minimised domination and which can contribute to a risk politics that is always open to revision and provocation (O’Malley, 2008).

O'Malley's vision of risk also sets up a sound ground for supporting the endeavour of exploring the innovative potentials of risk-oriented imaginaries of imprisonment in terms of their normative performances. Based on it, we may well reject the pessimistic observation that those nihilistic patterns of normative performance as discussed above should constitute the single essential character of risk schemes governing the incarceration practice. On the one hand, the complexity and diversity in the field need to be adequately acknowledged so that those innovative and experimental developments can receive proper attention. On the other, it is important to revitalise the political debates about risk so that those innovative forms of risk imaginaries and practices can have the chance to gain broader recognition and to challenge the dominant paradigms. In this respect, O'Malley's proposal for an open and 'minimal domination' framework of risk discourses is quite consistent with such ends.

Additionally, O'Malley's work contains rich insight as to 'where' to look for the inventive resources of risk experiments. As the cases discussed above indicate, the practices and innovations (like those initiating restorative justice experiment) in the peripheral sector of society can be as valuable resources as the officially mobilised prison reformations for the endeavour of exploring and realising the 'promise' of risk.

In the overview of the imaginaries of managing risks to the prison and to prisoners, we have already noted that the risk-centred imaginaries also contain the potential to embrace a more inclusive and open-ended kind of normative construction. In that case, the risk language may prove to be able to incorporate the element of 'understanding' into its operational scope and, more importantly, it may manifest the possibility of being hospitable and inclusive to those experiences which may not fit into the instrumentalist framework of risk control. The innovative part of this approach is that the risk management task can be fulfilled in tandem with the learning and recognition of prisoners' emotional needs and the moral depth of their social experiences.¹² The latter pursuit is by its nature an open and ongoing process: it needs to be based on continuous interaction with prisoners (and also ex-prisoners)

¹² See the relevant discussion in the overview section.

so that the risks they face can be comprehended more accurately. The insight gained in the process can, in turn, contribute to broadening the normative understanding of the realm of imprisonment.

Though it is too early to anticipate that such a reflexive-learning process of risk construction will certainly produce the needed insight for improving the normative performance within the contemporary imprisonment field, it does display some valued qualities that are lacking in the criminogenic-need approach. As we have seen, in the latter case 'risk' and prisoners' 'needs' are only connected in an external way; 'needs' only get acknowledged when they are endorsed by 'risk' management objectives and their normative depth is markedly impoverished. In comparison, it may be envisaged that the former pattern of normative construction could be more productive and promising.

This observation may also be extended to the more general sphere of the normative performances of risk-oriented imaginaries. As can be noted, the nihilistic patterns of these normative performances are often associated with the approaches to risk construction which separate the major beneficiaries and the targets of risk control. The type of risk imaginary that prioritises the incapacitation function of imprisonment is a typical example in this respect. In such cases, there is a very slim normative connection between prisoners and the sources of power which determine the goal of risk minimisation. As a result, the whole risk scheme is imposed on its target as an external force and is totally lacking in communication. Such a strategy undoubtedly enhances the closed character of the normative reality that it coercively constructs. In the other situation, when prisoners are both the targets and the beneficiaries of the risk management scheme, it becomes easier to establish an interactive relationship between the prisoners and the agent who learns from them to decide the pertinent risk reduction measures. Accordingly, there are also more opportunities for exploring the multiple moral implications of risk construction.

Apart from the above case, there are also other differences in constructing risks; for example, theories in risk studies have highlighted the difference between the

approach of 'risk control' and that of 'risk management' (Clear and Cadora, 2001; Hudson, 2003). They suggest that the latter approach, which recognises the uncertainty and inevitability of errors in risk situations, can better balance the various practices in treating offenders than the former approach which defines security as an absolute goal.

In sum, these types of risk-construction are far from being exhaustive. When those innovative approaches gain more influence within the custodial sphere, we will be able to extend our examination to cover broader dynamics regarding the normative performance of these risk-oriented imaginaries of imprisonment.

Chapter 6 Re-normalising Imaginaries of Imprisonment

I. Introduction

So far we have investigated three representative forms of penal imaginaries about incarceration in the UK and examined their performances in the light of introspective normativity. On this basis we are now in a position to seek some more general views of the contemporary field of penal imaginaries that we have studied and also to shed light on the major research questions raised at the very beginning of the thesis. This thus constitutes the main task of the present chapter.

We will try to identity some general attributes of contemporary penal imaginaries in the imprisonment field in terms of their nihilistic and innovative aspects in relation to normative performance. Following this discussion, we aim to illuminate a number of key factors relating to the quality and character of normative performance within the sphere of penal imaginaries and, on that basis, to find clues to a future which is more capable of openness, inclusiveness and normative innovation with regard to ways of conceiving incarceration and realising such visions: a future informed by a vibrant cosmopolitan spirit and marked by success in transforming the post-universalist penal dilemma into a creative sphere.

II. Escaping from Being Normative: Assessing the Contemporary Imaginaries of Imprisonment in the UK

In the last three chapters, we have applied the analytical approach articulated above to probe into three representative bodies of penal imaginaries about incarceration in the UK. They have provided the major grounds for us to assess the general performance of introspective normativity in this field.

This section will first summarise the findings of those three chapters and then try to advance an integral perspective for identifying some of the common dispositions of those representative imaginaries and investigate their implications for the normative performances in the current imprisonment field.

i. Liberal Imaginaries of Imprisonment

In Chapter 3 we examined various approaches of the contemporary liberal imaginaries in dealing with the imprisonment complex. In sum, the liberal imaginaries have been directly affected by the loss of faith in penal welfarism, which is viewed by us as the last universalist paradigm of penal ideals and which used to reflect the major normative consensus among the liberal elites and practitioners on managing the prison systems in the UK. Consequently they face a vacuum of universal normativity when trying to defend and develop the core values of the liberal tradition. Thus the normative performance of the contemporary liberal imaginaries is characterised by a notable struggle to acquire normative strength in a context where there is no support from any established allegiance on the ideal and purpose of imprisonment. Different strategies have been employed to pursue a revitalised normative vision of these contemporary liberal imaginaries. They include the exterior validity approach, the ‘limits’ acknowledgement approach, the cultural identity approach and the penal consumption approach.¹ It has been observed that there is a prominent tendency within these contemporary liberal imaginaries either to bring in external normative authorities to bear the burden of legitimising their central claims or relating them to some ‘realistic’ type of reasoning that implicitly acknowledges and somehow endorses the fundamental absence of any realisable utopian vision regarding the ideals of carceral practice. As a result, the vacuum of universalist normativity is consolidated and neutralised; the question concerning how the deprivation of liberty from individual members of the society and the imposition

¹ See the discussion of each specific strategy in Chapter 3.

of large-scale custodial measures on disadvantaged social groups can be morally justified becomes unanswerable or is directed into other discursive spheres (e.g. human rights, European values, 'Scandinavian' penal culture) which provide standards for the procedural aspects of imprisonment rather than the fundamental rationales which buttress its existence per se. Those strategies thus in effect disconnect the focus of the contemporary normative visions from the predicament of the post-welfarist penal field and all the puzzles and uncertainties related to it, while forwarding various alternatives to the essential task of confronting the perplexing circumstances of normativity directly. This position can be viewed as a retreat from seeking an ultimate 'response' to the normative challenge in the imprisonment field, and by doing so it creates a detachment from the ongoing antagonisms in the custodial realm, as well as in its corresponding socio-political dimension, where the concrete normative realities need to be identified, represented and developed innovatively at the discursive level. As our investigation demonstrates, the contemporary liberal imaginaries tend to cause a considerable degree of normative closure and block the potentialities for approaching the normative realities and developing their perspectives in open and creative interaction with them.

On the other hand, the transformation of these liberal imaginaries from their conventional allegiance to a single, universalist modern project (as expressed in the rehabilitative paradigm) to the increasingly recognised awareness of 'limits' has made possible the endeavour to approach the imprisonment field in a non-ideology-oriented way and to re-assess the liberal doctrines and penological perspectives according to that perspective. It also means that there is a potential for innovating and re-normalising liberal imaginaries if they are directed towards embracing the pluralistic, and often troubling, aspects of the realities in the present custodial sphere instead of sticking to the fashion of normative closure, as has been shown above.

ii. Populist Imaginaries of Imprisonment

These imaginaries represent one of the prominent trends within the current penal spectrum of the UK and are viewed by many as negative and detrimental to the civic

order of the country. In Chapter 4 we have examined the major representations of these populist imaginaries and the critical societal backdrop associated with their dominion. The study shows that populist imaginaries are deeply against the monopoly of discourses by the 'formal' approaches to exercising carceral power. They involve a crucial aspect of criticising and defying the official discourses and patterns of imagining prisons, which they deem to be 'out of touch' and to reflect the prejudices and weak moral sensitivities of penal elites and academics. However, in their attempts to establish the visions of prison which are in accordance with 'healthy' public sentiments and opinions, there is a notable inclination to adopt readily-available stereotypes, simplified images and instigating slogans as widely used tactics to generate normative understanding about issues related to prisons. As a result, these populist imaginaries have depicted a rather fixed picture regarding a broad range of the custodial phenomena, such as the environment and daily routines in the prison, the typical characters of inmates and staff and the plausible purpose of imprisonment. In effect they also fuel a particular tough and punitive standpoint of responding to the incidents and reformatory proposals within the custodial sphere, which is often referred to as one of the constitutive elements of 'moral panics'.²

It turns out that these populist imaginaries should not be simply understood as being led by a 'lack of judgement' or the blind revengeful emotions of the public. Instead, they seem to demonstrate their own sensitivity to the particular circumstances that have been characterised by the absence of normative certainty in the custodial realm. In the meantime, they also have minimum confidence in the ability of the official system to address this essential vacuum. In many populist visions, what signifies the failure of the formal criminal justice system and its representative intellectuals is not only their arrogance in their interactions with the 'lay' public and community members, but more importantly their dubious indifference to the moral aspect of their tasks. It is perceived that what should fall within the domain of public participation and debate as a comprehensive moral issue have been monopolized by a small elite group who claim a professional (and a-moral) approach to taking care of it. But there are great limitations in the ways in which these populist imaginaries seek to settle the

² See more discussion about the performance and social dynamics of populist imaginaries in Chapter 4.

normative predicament. In the first place, their conceptual tools are primarily non-reflexive. Thus in the attempt to grasp and express the normative realities within the custodial sphere they tend to cling to a fixed set of assumptions rather than keeping themselves open to the diverse facets of the puzzles and struggles that characterise the intricate status quo of the contemporary imprisonment complex. Eventually, the ‘commonsensical’ and ‘rough morality’ approach which is employed in the populist imaginaries does achieve some degree of certainty in determining what the normative orientation of imprisonment should be. But this certainty is at best a collective psychological certainty, rather than a *normative certainty*, because they in fact have already closed any access to approaching and interacting with authentic moral performance within the custodial realm by restricting their perspectives to some static ideas and cliché-oriented opinions.

In spite of the nihilistic side of populist imaginaries, it is important to recognise that they do reveal the intrinsic need to seek a vibrant moral basis for the crucial operation of penal power in places such as prisons. If the formal custodial system fails to provide such resources, it cannot help curbing the rise of the more reactive ways of seeking them. Moreover, the examination of the case of populism has also indicated that there is a potential for overcoming the normative predicament through the constructive process of democratising the penal field. The present situation of the populist imaginaries turns out to be close-ended and unsatisfactory; to fully resolve the inadequacy of elite-dominated normativity, they need to figure out a more innovative and productive way of doing this.

iii. Risk-oriented Imaginaries of Imprisonment

In Chapter 5, we have explored the risk-oriented imaginaries which have become a potent trend in the management of prisons as well as of many other public sectors. We find that the risk logic has penetrated into various levels of the custodial systems and has mediated many of the traditional patterns of activities in and related to the prison. For example, the understanding of the functional goals of prison and its

concrete operations, such as rehabilitating prisoners, become subject to the risk-centred rationales and thus get re-defined and re-organised.

However, our study also suggests that risk-orientated imaginaries are not at all ‘value-free’ as they appear to be. In contrast, they are involved in a variety of patterns of normative construction which are rather sophisticated but which have concrete normative implications. They comprise strategies which trivialise the claims of holistic normative perspectives and subordinate them to restrictedly defined normative systems which are conditional in nature and case-specific for certain pre-established ‘risk’ contexts. Apart from that, they routinely use ‘risk’ as an ideological shelter so that the target of risk reduction and minimisation is endorsed naturally as a prerequisite to the detriment of any other substantive normative concerns. Finally, the risk-oriented imaginaries are connected with a very diverse set of types of praxis in the custodial systems and in general they lack an integral and coherent rationale. In each specific practical domain managed by the risk logic, however, they usually give rise to a certain normative structure which contains a hierarchy of norms and standards for guiding and evaluating practices within this particular risk-penetrated sphere. Accordingly, the risk-oriented imaginaries have established their own normative visions. The features of such normative pursuits can be described as fragmentary and divergent. The sphere of universal and holistic normativity is basically exiled to a state of oblivion under the guise of risk-prioritised normativity.³

Thus the risk-oriented imaginaries provide a distinctive approach to the task of responding to the post-welfarist normative predicament. But they are also rather limited in expressing and developing the dimension of normativity within the contemporary imprisonment field, for they are intrinsically self-referential and closed-ended and can hardly enable any constructive and productive interaction with the authentic situation regarding the puzzling aspects of current custodial practise. Yet we also notice the fact that in maintaining the effective operation of risk practices within the prison regime, this approach requires a certain degree of understanding of the inmates’ needs and thus often engenders a process of interaction

³ See more details about the normative performance of risk-oriented imaginaries in Chapter 5.

and reflexive assessment of its undertakings. Consequently, the normative construction involved in risk imaginaries cannot be entirely isolated from the concrete realities that enter into their reflexive diameters on a routine basis. For example, as we have noted in our study, the risk-management scheme which aims to reduce the risks posed to prisoners and the prison itself can also create an interactive space between inmates, staff and policy-makers and generate some first-hand and intimate understandings of the relations and real needs of the people involved. From this perspective, the risk-oriented imaginaries can be considered as containing the potential of becoming innovative resources for the normative endeavour within the imprisonment field.

iv. Handicapped Normativity: Outlining the Challenge of Imprisonment Imaginaries

The penal imaginaries that we have explored in the last three chapters are among the most representative ones within the custodial sphere. On the basis of these studies, we can now start to identify some common aspects of normative performances within the contemporary imprisonment field from a more holistic perspective. It is anticipated that such an investigation can also contribute to the task of meeting the challenges that are hermeneutically displayed in this general vision of introspective normativity.

The various forms of the penal imaginaries discussed in our thesis have shown a rather divergent set of strategies in constructing their normative visions of the custodial phenomena, but most of them can be observed to involve a nihilistic aspect according to the introspective normativity assessment. The diversity in their ways of expressing and responding to the moral realities of the post-ideological custodial field does not remedy their essential weakness in fulfilling the task of innovatively overcoming the absence of any universal normativity. On the contrary, their approaches are basically oriented towards normative closure and in many cases are content with some self-referential discursive systems. Thus there is scarcely any space within them for getting in touch with the dynamic realities of the custodial domain, especially in the light of its incoherent and ever-changing character which is

subject to and fragmented by antagonism, compromise and intercommunication between pluralistic normative orientations and the societal forces that buttress them. This normative closure identified as such does not only manifest the crucial impotence of those approaches at the technical or strategic level, but is itself a constitutive element of the status quo of the normative spectrum regarding the contemporary custodial regimes in the UK. It signifies the deep division in the normative foundations of the exercising of carceral power and the lack of any viable moral resources for redefining and justifying the purposes of its operation. Moreover, the strategies of those penal imaginaries that have the effect of neutralising or even concealing this profound lack of universal normativity also indicate a noticeable inclination to ‘escape’ from the task of being normative. We have seen many concrete examples of this in the preceding discussion. The risk-oriented imaginaries can be observed to engage in organising various ‘isolated’ normative spaces with the risk logic as their ideological shelter; the populist imaginaries stick to their ‘rough’ morality and find their certainties in the repetitive representations in the mass media, whereas the liberal imaginaries build their normative claims on external discursive systems or merely come to terms with the decline of any utopian visions and aspirations in their pursuit of the improving of the custodial system.⁴ As a result, the inherent call for the re-normalising of the exercise of carceral power in the post-welfarist phase is either bypassed or substituted by something else in different ways within those imaginaries. This suggests a more profound predicament than the lack of universal normativity per se. To ‘escape’ from the struggles and uncertainties within the normative sphere of imprisonment means that those approaches also give up their intrinsic ambition to grasp and improve the realities of the custodial sphere, for such realities cannot be appropriately addressed by any technical terms or externally articulated explanatory schemes, but are intimately associated with the performance of introspective normativity in the ways in which they are imagined and are being realised in concrete praxis. Without active participation in the exploring,

⁴ It is noteworthy that in order to achieve a general assessment we have to omit some of the specific types of imaginaries discussed in the last three chapters, particularly those that we find contain potentials for normative innovation. The generalisation we make here does not imply that the ‘escaping from being normative’ is a defining feature of the current imaginaries of imprisonment; it is instead treated as indicative of an overwhelming tendency in them which we capture on the basis of summarising studies of each of the specific strands of penal imaginaries.

re-discovering and re-defining of the normative dimension and remaining open to its development, we can only anticipate a handicapped normativity, which is far from being able to meet the challenges posed by the present incarceration complex.

In the methodological chapter (Chapter 2), we have elaborated four ideal types for understanding the dynamics of introspective normativity as it is performed in different penal imaginaries. They include the patterns of ‘detachment’, ‘oblivion’, ‘confrontation’ and ‘transformation’. The former two patterns have been exposed as having a noteworthy nihilistic facet in dealing with the absence of universal normativity, as they tend to shrug away the burden of normalising penal practice rather than seeking an authentic response to such deeply perplexing aspects of penal realities. In our assessment of the three representative imaginaries of imprisonment, such patterns can be observed to be immanent in many cases in spite of the great variations in specific ways of employing them.⁵ From this perspective, the limitation of those approaches and the handicapped nature of the normativity they represent are also clear.

As for the two innovative patterns of normative performance, we have not yet found any examples of systemic approaches in penal imaginaries. But the hermeneutics of introspective normativity, which forms the primary task of our thesis, may have manifested itself to be able to pave the way for their realisation. By exposing the nihilistic patterns of the normative performance within the extant approaches to imagining imprisonment, this effort facilitates the nurturing of the consciousness which is keen to confront the normative challenges in the imprisonment field in an authentic way and to reject the easy answers offered by those counterproductive approaches. In doing so, it also helps to clear the ground for the possible innovative ‘transformations’ to take place. Therefore, the examination based on the idea of introspective normativity should be understood as intimately associated with the endeavour of normative innovation in the imprisonment field and as opposed to that which confines itself to the pursuit of neutral ‘scientific’ knowledge.

⁵ See the examples and the relevant analysis in each of the chapters discussing concrete forms of penal imaginaries.

If we recall the social-historical hermeneutics which we discussed on the basis of interpreting Durkheim's works, we may find that it *fulfils a crucial normative task* in exposing the moral realities within the traditional symbolic systems (such as religions) because, while it succeeds in transmitting such realities hermeneutically to an audience who adhere to those conventional moral sources, it also accomplishes the task of re-building these realities in an innovative (rational) form and thus also developing them. In contrast, our study aims to capture a rather different sort of normative realities in the case of the incarceration field. They have a more pluralistic character and can hardly be conceived of as a coherent whole. More importantly, our examination also seeks to direct our attention to the 'null' aspect of the normative spectrum (i.e. it focuses on the dynamics related to 'incompleteness' and 'absence': the absence of universal normativity, the absence of competent successor of holistic penal paradigms, etc); this appears to be contrary to Durkheim's search for 'what is real' in seemingly illusionary symbolic systems. However, in the respect of pushing forwards the normative understandings and normative performances within the society (as in the imprisonment field), our study has the same effect as the former approach. By revealing the nihilistic aspect of the normative reality within the prison systems, we also shed light on their inherent need to re-normalise the ways in which imprisonment is imagined. In the following section, we will probe into some of the relevant topics which are crucial to this task.

III. Re-normalising Imaginaries of Imprisonment: Social Conditions and Innovative Approaches

It is worth noting that the normative performance of penal imaginaries does not refer exclusively to the discursive domain, but is intrinsically an issue that is rooted in comprehensive social dynamics. The task of overcoming the nihilistic aspects of these imaginaries of imprisonment and re-normalising them is never confined to a paradigm change within the abstract realm of 'ideas' and 'notions', but should be viewed as achievable only through a more holistic transformation within the socio-political dimension which is indispensable to the configuration of the imaginary landscape of imprisonment.

In the previous chapters, we have already noted the particular societal backdrop of each of the specific approaches in the construction of penal imaginaries and have incorporated them into our discussion. It is clear to us that the performances of those penal imaginaries are all realised in concrete social settings. In this respect, the tendency to try to escape from being normative is also deeply connected with some of the key attributes of the social dynamics concerning the circumstances of custodial practice. In the previous chapters we have touched on some of the socio-political facets of each of these types of penal imaginaries and on this basis we will make a further effort to shed light on some general aspect of the social conditions that are correlated with the performance of introspective normativity within the imprisonment field. The aim of this investigation is not to establish a cause and effect relationship between them, but rather to establish a broader context for pursuing the task of re-normalising the imaginaries of imprisonment. If such an undertaking can engender any fruitful results, instead of restricting itself to the cognitive realm, it must be made in tandem with the effort to make corresponding changes possible at the social-structural level.⁶

i. Social Conditions Correlated with Nihilistic Introspective Normativity

In our examination of the three representative imaginaries of imprisonment, we have found that they are all characterised by a certain degree of normative closure. This was observed as co-existing with different types of *relative segregation* of the primary audiences and advocates of specific penal imaginaries in the society, especially in terms of their relationship to the population sectors which are most targeted by the carceral power of the state. The risk-oriented imaginaries, for example, mainly apply an instrumentalist logic to define the functional goal of the prison, and in many respects give rise to a ‘governance-in-a-distance’: the individual characters of those who are subject to it tend to be marginalised in its gaze and its

⁶ On the other hand, the ultimate end of the renormalisation of penal imaginaries is nothing but an attempt to make meaningful interventions in the existing custodial practices with a view to creating a better situation and set of arrangements which is underpinned by vibrant representations of the moral realities that are being developed in the society.

collective categories become the major target of risk calculation and management. Accordingly, there is scarcely any space for active interaction with inmates (and even with prison staff), for in the risk schemes they are nothing more than passive subjects, whose 'needs' are defined and acknowledged only in accordance with the end of risk reduction. Their own idiosyncrasies cannot play any significant role in establishing the normative visions in the risk-oriented imaginaries, since they are basically excluded from the sphere of normative construction and reflexion. In the case of populist imaginaries, we also noted the paradoxical isolation of the 'punitive' public. Its members (or the audience/consumers of populist accounts of prisons) are far from being well organised and capable of taking effective actions collectively, but are mainly separate and powerless individuals who find no other way of living with their deep perception of insecurity than resorting to 'tougher' measures as a response to the imprisonment circumstances depicted in tabloid newspapers.⁷ The presentation of prisoners as strangers and monsters in the populist imaginaries thus reflects the deep segregation between the public and the group of people who are most targeted by the custodial systems, as well as the segregation between the audience/consumers of such imaginaries. As for the liberal imaginaries, what is at stake is the puzzling status of liberal penologists and academics within the imprisonment field. The contrast between the expanding academic sectors in universities (most of whom tend to embrace the liberal penal values as broadly defined in this thesis) and their actual influence in the policy-making realm has nowadays received widespread notice and engendered extensive debates.⁸ This may also be viewed as a signal that active interaction of the liberal imaginaries with the practical sector, as well as with the 'punitive' public, is rather restricted.

The most problematic side of the social situations concerning the performance of introspective normative approaches, however, is connected with the segregation and exclusion of the contemporary disadvantaged groups within the society. In the overview section of Chapter 1, we have remarked on the over-representation of those members of the population who are often thought of as the 'urban underclass' and the ethnic minorities. Most of them are unemployed, have not received a university

⁷ See the analysis of the socio-psychology of the populist audience in Cheliotis (2010).

⁸ For example, see the discussion in Loader and Sparks (2010).

education and are suffering from psychological disorders at different levels. Apart from such disadvantages, they are mostly marginalised from the society and are not recognised as fully competent ‘citizens’.⁹ This not only engenders the problem regarding structural inequality and the material sociological consequences within the society, but it also has a profound impact on the sphere of normative performances in the contemporary imaginaries of imprisonment. Because the groups that are the main targets of custodial measures are rendered powerless and are mostly silent within the discursive forum, this tends to enhance the monistic disposition of the mainstream penal imaginaries. They do not seek to understand those who stand on the opposite side and instead find satisfaction in articulating a single-dimensional account of what purposes the prison should serve. Thus the normative realities in this field are only partially constructed; and without any effective interaction with the ‘strangers’ who are directly affected by carceral institutions, all the mainstream penal imaginaries lose a significant reflexive dimension: they cannot have any authentic relationship with the others (whose truths has been established in advance by their already-established stereotypes or ‘logic’ in understanding their ‘needs’ and ‘problems’) and as a result they are left with an impoverished normativity. The tendency of ‘escaping from being normative’ in fact reflects their powerlessness to achieve normative innovation, which can be viewed as closely linked with this peculiar social-structural situation. Therefore, we may suggest that re-normalising the imaginaries of imprisonment is a task that should be pursued along with the de-segregating of the custody-targeted social groups; the overcoming of normative closure is inherently connected with a revitalising interaction between the mutually segregated social spheres and with the fight against exclusion at a social-structural level.

ii. Re-normalising the Mainstream Forms of Imaginaries in the Imprisonment Field

As we showed above, the task of re-normalising the imaginaries of imprisonment must be interactively embedded in the enterprise of bringing innovative changes to

⁹ See our discussion in Chapter 1 (II.ii), and see also Vaughan’s (2000a) discussion on punishment and ‘conditional citizenship’ and Bauman’s (2000 & 2002) analysis of the relationship between ‘underclass’ and consumer society.

the material social circumstances relating to the normative predicament within the custodial sphere. For each specific approach to constructing the normative understanding of imprisonment, it needs to fully acknowledge and face the nihilistic dilemma which is identified in its introspective construction of the normative realities of imprisonment, and to seek innovative ways to break through the normative closure which jeopardises its effective communication with the suppressed but living realities in the field which are usually associated with the experiences and perspectives of those who are amenable to incarceration and severe social exclusion. Accordingly, modifications can be made at the conceptual level and in the meantime may result in particular reforms in the practical arena with a view to a better recognition of the different strands of moral realities as well as the authentic needs of those people who are involved in the exercise of carceral power. In return, such modifications, whether they are comprehensive or merely restricted to specific matters, can be envisaged as leading to further exposure and development of the moral domain regarding imprisonment. The interactive process can thus serve as a motivating mechanism for the pursuit of a re-normalised scheme regarding the operation of the carceral systems. It is quite possible that the established boundaries of the specific approaches to the penal imaginaries are subject to redefinition as well, as they become more open to other perspectives. The puzzles regarding the deeply divergent and fragmented normative landscapes within the imprisonment sphere can also be dealt with in a more constructive way.

In this perspective, each of the specific forms of penal imaginaries can be viewed as containing the potential for innovative development in terms of their normative performance. In the case of liberal imaginaries, for example, the challenge lies in the attempt improve their connections with the general public as well as the custody-targeted social groups. The latter are usually treated as the objects of sympathy or else as co-operators and passive interviewees in ethnographic studies of incarceration, while the former are taken as the containers of blind vengeful emotions. This mutual segregation renders it impossible for the liberal imaginaries to revitalise the moral realities to which they adhere. However, as we sought to show earlier, they tend to recognise the limits of their conventional paradigm based on the rehabilitative ideal

as a single universal solution to the task of the imprisonment complex. This particular consciousness may serve as the starting point for initiating such innovation by virtue of their normative performances.

As for the populist imaginaries, the key challenge for them is to transform their primary means of constituting and expressing consensual views about the prison in a more constructive and authentic direction. The abandonment of the partial and stereotypical patterns in their normative performance needs to be accomplished along with a structural change in their 'populist' audience and progress in building a more meaningful relationship between them and the stigmatised 'underclass' social sectors. As we discussed in Chapter 4, the mass media forum is by nature a site for heterogeneous representations of social realities and it is by no means monopolized by a single strand of imaginaries of imprisonment. There is, as a matter of fact, a good source of representations and reflections of the people and the forms of life which fall outside the mainstream social order and which are affected most severely by the exercise of the carceral systems. They include the various works of independent film directors, writers, stand-up comedy shows and academic publications. Though their influence in terms of the ideology of 'populism' is not comparable with the dominant imaginaries about imprisonment, they nonetheless present challenging perspectives which may potentially lead to the transformation of populist views of prisons and prisoners. More importantly, such a transformation should not only aim at a static change in the 'picture' of imprisonment in the public mentality, but should also seek to shed reflexive light on the constitutive structure of the audience and the consumers of such imaginaries as well as their interrelationship with the segregated others, who have so far been treated mostly as the passive object of 'policy changes', whether such changes are in their interest or not. In other words, to effectively re-normalise the current populist imaginaries of imprisonment it is necessary in the meantime to motivate the reconfiguration of the 'audience' and the dynamics of forming and expressing a 'democratic' voice on how to treat the imprisonment issue, and also to re-invent the relationship between the mainstream society and the custody-vulnerable populations. The cognitive content of such re-normalised 'populist' imaginaries can only come to life when it is genuinely

correlated with and interacts with what is concretely going on and giving rise to a reshaping of the legal-political statuses of and mutual recognition between those different social sectors. On the other hand, the re-normalised ‘populist’ imaginaries should never be satisfied with developing a new ‘picture’ of the ideal state of prisons; instead they must understand the inherent ‘incompleteness’ at the core of their task, and try to bear this ‘incompleteness’ and bring it into their concrete encounters with those people who have more intimate experiences of incarceration but who lack the discursive power to bring their experiences into the light of public awareness.

On the basis of this idea, it is worthwhile to identify a number of reformative propositions that may serve as initiating strategies to facilitate such progress. Firstly, a broader discursive forum needs to be established to allow intensive dialogue and interaction between those who are routinely segregated by different statuses within the existing social material and symbolic systems. This task does not only include that of transmitting more voices and ‘points of views’ of the marginal and the ‘underclass’ to the mass mediated domains, but, more importantly, is about creating sufficient mundane occasions and opportunities for communal political and socio-economic engagement across those divided social sectors. For example, in the case of initiating a significant policy change in custodial institutions (e.g. the decision as to whether to hand over inmates at multiple prisons in England to some privately owned and managed enterprise), this should not be taken merely as a bureaucratic issue to be decided following established examples (like those custodial institutions which have been privatised already), or as an issue to be settled exclusively through the routine parliament-democratic procedures. Instead, the decision-making must also make audible the voices of those who are affected most considerably – not only the specific inmate groups who are subject to the possible transmission, but also their family members, other close relatives, local connections and those ‘underclass’ and ethnic communities whose members either serve their sentences in prisons (including privatised ones) or face a high probability of suffering such a fate. This discursive expansion per se, apart from its role in generating greater legitimacy in prison policies, would be a meaningful step towards promoting encounters with the irreducible existence of those strangers whose images are presented as less

stereotyped. Despite the fact that such encounters are easily subject to distortion caused by the fixed imaginaries on both sides, such occasions might not be entirely fruitless in the sense of putting into question the unilaterally elaborated images and developing people's skills in confronting strangeness and being open to the knowledge and the living experiences of the suppressed. Very likely, the process would engender encounters between varied forms of discourses as well, since the suppressed and the other cannot be fully represented if their voices are framed within the routine forms of reasoning and the strategies of advocacy that are expressed in the mainstream media. It thus can be envisaged that many sub-cultural tactics of presenting the visions of the formerly segregated may actively enter the discursive forum. They are no longer such constrained forms as those defined from the perspective of correctional institutions or of academic interviewers, but are in accordance with the subject's own motivation for expression and recognition. Indeed, the whole process may turn out to be more complicated and more challenging than even the most liberally-oriented deliberation approaches that have been practiced so far in reaching a consensus in terms of prison matters and its outcome will never be immune from uncertainty. Nevertheless, it is vital - and indeed indispensable - to the renewal and re-normalisation of the performance of the current penal imaginaries in the populist spectrum, if the pursuit aims to achieve anything meaningful.

Secondly, apart from the effort to broaden the discursive forum, it is also meaningful to create more occasions which will necessitate communication and negotiation between separated social sectors in terms of 'action-together'. This is because such discursive encounters with 'strangers' can rarely be productive if they are taken as an abstract-cognitive matter alone. What falls short in this case is the motivation factor, without which the discursive progress is doomed to be impoverished. The concrete needs of taking communal actions and striving for a shared end can thus serve as the unique catalyst for nurturing an innovative milieu which might transform the conventional imaginaries of imprisonment of mainstream society. To create occasions for 'action-together' between the populist audience and the alienated others may include a diversity of options. For example, the programmes of prisoners' engagement in community service and the exhibition of inmates' artworks have

already been carried out by some of the custodial institutions in the UK.¹⁰ Yet the critical part of this ‘action-together’ is that sufficient interactive space should be secured to enable genuine engagement and interaction between the public and the often-imagined-but-rarely-contacted strangers: those who are or were detained and their fellows and family members. In this respect, community-oriented prison programmes still have extensive innovating possibilities.

The examples discussed above mainly concern the initiatives related to the reformation of imprisonment practice. However, to re-normalise the current populist imaginaries it is even more important to extend the endeavour to a broader social policy spectrum. As we have manifested in chapter 4, the populist dynamics have profound structural roots in the interactive patterns of the mass media, its major audience and the silent ‘others’. Thus to promote an effective transformation of populist penal imaginaries, the ‘encounter’ and ‘action-together’ with strangers need to take place at multiple and diversified social-interactive spheres rather than revolving around specific prison issues. The imaginaries of imprisonment would transform accordingly as the encounter and action-together with ‘strangers’ produce an innovative milieu for the populist audience and the marginalised social groups to renew the comprehension of each other (and themselves) and to redefine their social relationship on the basis of that.

The requirement of embedding normative innovation within more vibrant interactive and communicative relations between different social spheres also concerns the risk-oriented imaginaries. The normative closure in those isolated models of risk reduction can only be properly addressed when their practice can manage to integrate the heterogeneous realities concerning the living experiences of those who fall into their contact. In sum, the innovative re-normalisation of those different types of penal imaginaries has to be realised in accordance with the reduction of social segregation and the promotion of effective communication and mutual recognition between perspectives based on diverse moral realities.

¹⁰ For example, ‘insider art’ was exhibited in Gallery North in Northumbria University, and it formed part of the programmes in the British Criminology Society Annual Conference in 2011.

It is also noteworthy that the prospects of such re-normalisation are not yet conspicuous. This is because in essence it is concerned with a longitudinal process of development involving not only shifts in values and ideas, but also a re-arrangement and re-definition of the realities in the imprisonment field. Thus the task is by nature a dynamic one and is subject to continuous renewals. Nevertheless, it is not meaningless to identify the crucial social conditions and the critical factors in relation to this pursuit, as the adequate understanding of them is indispensable to its ultimate realisation.

On the other hand, as the exposure of inadequate ways of addressing the absence of universal normativity within the mainstream imaginaries of imprisonment has indicated some similar patterns in terms of introspective mechanisms and social conditions, it tends to urge us to find a set of relatively consistent normative grounds as the gross premise of and guidance for the innovating efforts advocated above. It becomes necessary not because it in advance prescribes substantive norms for establishing ‘ideal’ prison systems, but because it serves to alert us to what is *not* legitimate and what is *not* constructive in conceptualising the imprisonment sphere and in framing the social relationships between different groups and identities. In a sense, it is given the task of making us aware of the absence of universal normativity and at the same time rejecting false substitutes and counterproductive social arrangements. As a peculiar ‘night-watchman’, this prerequisite normative guidance would then be capable of clearing the ground for some decisive normative innovation which would be potent enough to justify the future direction of reforms in the sphere of incarceration.

In the current circumstances, such a role can be best assumed by an enriched cosmopolitanism. In fact, some of the criminologists from the liberal penological background have turned in a cosmopolitan direction in their critical reflection on and criticisms of the current criminal justice systems.¹¹ And it is not easy to draw a clear line between the liberal penal imaginaries and the cosmopolitan vision of penal practice. Yet, as we will show shortly, there are certain facets of cosmopolitanism

¹¹ Barbara Hudson is one of the examples, and we will discuss her ideas shortly.

which are particularly relevant to our undertaking of re-normalising the imaginaries of imprisonment; and they are worthy of a particular examination.

IV. Normative Innovation in the Field of Imprisonment: An Enriched Cosmopolitan Imaginary

i. Encountering Strangers in A Divided world: The Perspective of Cosmopolitanism

There are a variety of versions of cosmopolitan theories in the contemporary academic literature (Moellendorf, 2002; Benhabib 2006; Habermas, 1999, etc). Despite the divergence in their specific ideas, they all attach great importance to the status of the strangers or ‘others’ in contemporary societies and just ways of treating them. In such perspectives, coexistence with strangers is acknowledged to be both prevalent and normal; it is then proposed to extend legal protection and social recognition to those who are not necessarily members of ‘our’ political and moral community. For many cosmopolitans, the exclusion of immigrants, ethnic minorities and underclass youths engenders huge gaps and inequalities within contemporary societies which cannot be justified, despite the fact that many of the excluded may be deemed ‘incompetent’ citizens by the designers and legislators of conventional liberal political regimes because they are either unwilling or unable to assume the ‘duties’ of a qualified member of the community. From a cosmopolitan perspective, such moral differences should be tolerated at least and strangers should be treated with dignity and respect. The use of measures of exclusion, particularly incarceration, must be meticulously restricted; they are only justified when dangers to the society can truly be identified. For instance, authors like Barbara Hudson (2008) have levelled criticisms at the orthodox discursive models of criminal justice based on the ‘while male subject’, and the use of incarceration as a means to contain ‘strangers’ and to maintain the conventional order and social structure. They instead advocate the ideal of cosmopolitanism which is inherited from Kant’s thesis on ‘Perpetual

Peace'.¹² In this perspective the existing relationship between the mainstream society and the 'strangers' it encounters needs to be completely revised. Tolerance and 'hospitality' are proposed to take the place of requirements based on qualifications and identities. 'Strangers' are viewed as deserving hospitable treatment, despite the fact that their moral universes are quite distinct from 'ours' and are even beyond the reach of 'us'. In this case, the application of custody is subject to harsh scrutiny even before it is delivered.

What makes cosmopolitanism particularly relevant to our research is that it represents one of the keenest forms of consciousness of the divertive and pluralistic status quo of the normative landscape in the contemporary social settings. Moreover, it shows great concern for the conditions pertaining to the encounter with strangers. In this regard, cosmopolitanism stands out as opposed to some key shortcomings of the mainstream penal imaginaries. Its valuing of 'hospitality' towards strangers, when applied to the cases of prison-prone disadvantaged groups, can potentially remedy the social conditions that are connected with normative closure of the kind we identify in the mainstream imaginaries of imprisonment.

Yet, for many people, cosmopolitanism has an unrealistic utopian colouring; even its advocates hardly bother to analyse the concrete scheme of actions which might lead to its realisation in the political and institutional realm, particularly with regard to the predicament we face in the contemporary imprisonment field. Therefore, like many other progressive perspectives, the cosmopolitan approach is susceptible to the accusation that it is largely detached from the real situations in society and that it is no more meaningful than an elusive dream. In this respect, our findings based on the examination of introspective normative can also contribute to developing the insights of progressive imaginaries by exposing and making effective their normative construction. In the case of the cosmopolitan imaginary, such an examination can help us to explore the possibility of concrete forms of co-existence with strangers and

¹² There are diverse resources from which these cosmopolitan ideas have sprung; some of them can be traced to philosophers in ancient Greece, like the Stoics, whereas Immanuel Kant's 1795 essay, 'Perpetual Peace: A Philosophical Sketch' has been deemed the most representative and systematic articulation of the cosmopolitan ideal in the modern era.

may shed light on how the renewed moral realities can be achieved in the interactive process and what they may imply for the arrangement of carceral power.

Therefore, an abstract theory of cosmopolitanism is not sufficient to remedy the problems within the imprisonment sphere. It must be enriched by following our approach of normative reflection and innovation in order to become a concrete and dynamic undertaking. Whereas a cosmopolitan conception of value is meaningful in helping us re-imagine the arrangement of carceral systems, it also serves the significant task of creating the cognitive and socio-political premises for innovating and re-normalising the contemporary custodial landscape.

ii. The Cosmopolitan Imaginary of Imprisonment: Enriched in the Light of Introspective Normativity

In this section, we will advocate some concrete proposals inspired by the idea of cosmopolitanism for dealing with the problems of imprisonment.

In the first place, it is necessary to stress that cosmopolitanism alone is still not sufficient to serve as the ultimate ‘answer’ to the current normative predicament in the imprisonment field as it has been identified in our preceding analysis. The reason why we choose to highlight this approach, following our assessment of the three mainstream forms of penal imaginaries, is not because it is thought to be a substantive replacement of those mainstream approaches. As a matter of fact, as is suggested by our brief discussion above, the existing forms of cosmopolitan thought have mainly been developed by virtue of international or cross-cultural relationships. When it comes to the problems associated with ‘internal strangers’, those who are mostly segregated as the result of those socio-economic processes which are penetrated by the ‘market supremacy’ ideology, the full scope of cosmopolitanism has yet to be developed.¹³ In terms of penal policies and structural arrangements,

¹³ With regard to the relationship between the primacy of neo-liberal strategies over welfarism and the governance of the socially disadvantaged population, see particularly the analysis of Wacquant (2009a & 2009b). Unlike those ‘strangers’ who come from other cultures, the profile of the urban

cosmopolitanism is still at a tentative stage. There is much still to do for cosmopolitan theorists to uncover the ‘otherness’ of those who are convicted by official criminal justice systems which apply a highly homogeneous language characterised by formal uniformity. In this respect, what is needed is more concrete studies about and insight into how these suppressed identities, experiences and perspectives could attain appropriate recognition within the criminal justice procedure as well as in the correctional institutional practices and how the entire system could be re-organised to meet such a requirement. From this point of view, as a substantive approach, cosmopolitanism still needs to be developed into a more mature and concrete position before it will be qualified to offer a substitute for the current mainstream forms of penal imaginaries.

However, there is one more important reason why we should be cautious about taking cosmopolitanism directly as a readily available route for addressing the normative predicament within the imprisonment field. For what lies at the centre of this predicament, as we sought to demonstrate at length in the previous chapters, is not simply the rightness or wrongness of particular penal ideals, but the problematical status of introspective normativity within the post-universalist imprisonment field. If cosmopolitanism is taken as a set of established norms that are waiting to be applied to the under-enlightened penal sphere, then it is by no means immune from the vulnerability found in the mainstream forms of penal imaginaries. Adopting such an approach, cosmopolitanism can easily be transformed into a sort of essentialist normative system which is oriented to prescribing universal norms regardless of contexts. However, once it becomes a closed prescriptive system, cosmopolitanism is subject to the queries of introspective normativity as well. In this regard it does not necessarily assume any privileges over its counterpart penal imaginaries, such as the liberal approaches to imprisonment discussed in Chapter 3.

Therefore it is necessary to make a distinction between two ways of making use of cosmopolitan insights in the custodial context. One is concerned with attempting to

‘underclass’ has largely been shaped by the policy shifts in post-Second World War Britain; this very fact means that their social characteristics and discursive status must be treated particularly if an approach based on cosmopolitan inclusion is to achieve any meaningful goal.

establish substantive ideals and objectives endorsed by cosmopolitan moralists and reorienting institutional praxis in accordance with them; the other is mainly concerned with how to deal with those situations which are characterised by differences and pluralism which have been created by the coexistence of multiple substantive value systems. In short, the former primarily inherits the desire of modernity for a homogeneous moral horizon while the latter understands its normative role as less ontological and more relational: it is attempting to find a morally sound and feasible solution to the deeply divided normative spectrum and competing claims from heterogeneous traditions of values and moral visions. For those who advocate the latter perspective, the respect for different others is usually attuned to the ethics of dialogue and communication: it is not an imperative for the foundation of certain ontological goods, but rather a necessary substitutive approach to reaching a normative consensus in a world that is devoid of the prospect of any unitary vision of the good.¹⁴

If we recall the examinations that we made following the route of introspective normativity, we will find that the latter cosmopolitan perspective, instead of the former, may be well suited to our task of re-normalising the imaginaries within the imprisonment field. As we tried to show, the peculiar normative predicament of incarceration is related to the impotence of the mainstream penal imaginaries to respond to the divided and fragmented realities in this sphere, which renders them vulnerable to different types of normative closure. We tried to uncover the profound social linkage with such nihilistic tendencies in the realm of normative performance. The major problem is the segregation and isolation of those disadvantaged social groups who constitute the main source of the imprisoned population from the general public and the mainstream society. To mobilise the endeavour of re-normalising the imaginaries of imprisonment is thus a two-fold task: on the one hand, it is necessary to bring reflexive light to the existing forms of penal imaginaries in order that their introspective normative constructions can be made open to certain distinctive and

¹⁴ For example, Habermas (1999) has offered a review of the challenges within the cognitive sphere of morality since the absolute moral authority of religion lost its fundamental power with the ascendancy of the enlightenment. In his examination of various modern approaches to providing a rational content for morality, he acknowledges that ethics based on discourses can best fulfil the role of achieving justifiable moral arrangements in the contemporary world.

under-recognised realities within the imprisonment field; on the other, an effort should be directed towards transforming the social segregation and deprivation of communicative actions so that the required conditions and the atmosphere necessary for re-inventing the penal imaginaries and actual practical patterns can be created. In this perspective, cosmopolitanism is a meaningful approach in the sense that it places the relationship with strangers and different others at the centre of its ethical considerations. In this regard, the relational (instead of the ontological) cosmopolitan approach has managed to target the most critical part of the problematics of contemporary imaginaries of imprisonment.

However, it is then also clear that cosmopolitanism is valued in this context mainly for its keen consciousness of these irreducible ‘others’ and of their fragmented moral universes rather than for its substantive notions about the worthwhile objectives of custodial institutions. To put it differently, the promising aspect of cosmopolitanism lies in what it can do to make the future different from the status quo of a social reality characterised by social segregation and the suppression of effective communication and mutual recognition between the mainstream society and disadvantaged groups. That means that the new realities envisaged by cosmopolitanism address the crucial social conditions that are responsible for the quality and improvement of the performance of introspective normativity. Such a contribution may thus be better seen as indirect rather than direct. For the same reason, we are not in a position to be able to readily describe what the specific prospects of the normative imprisonment sphere would be, if the cosmopolitan principle were to prevail in broad social relationships and in the organisation of penal practices, especially in terms of its cognitive element, which would have to be created in the concrete transformative process rather than prescribed in advance.

On the other hand, the limits discussed above do not render futile our purposeful pursuit of a more comprehensive understanding of the cosmopolitan approach which would be oriented towards the actual needs in the imprisonment field and towards bringing corresponding changes to the mainstream forms of imaginaries. When we do this, we aim to figure out what concrete contents and innovative ideas such a

general cosmopolitan ethics can bring to our project and how it can be enriched in the light of introspective normativity.

iii. Imagining Imprisonment in A Cosmopolitan Spirit

The failure of the mainstream imaginaries of imprisonment in the respect of normative performance is directly associated with their inability to address the moral realities in the 'lower' social sectors: the urban poor, the unemployed and the 'unemployable', teenagers and youths who have dropped out of school, the black community, illegal immigrants and other ethnic minorities, who have so far comprised the majority of the prison population. From the perspective of introspective normativity, the first demand in our attempt to re-normalise the imaginaries of imprisonment is to end their peculiar normative closure so that representations of different realities can be reflected in the discursive forum, and in the meantime to change the existing practices and relationships within the imprisonment field. In the foregoing studies, we have already tried to explore what respective strategies can be adopted by those three mainstream approaches in imagining incarceration as intended to serve such an objective. A cosmopolitan way of dealing with 'difference', particularly difference within the moral sphere, is very much in accordance with the innovative proposals hitherto discussed, and it can further inspire us to find some more systematic approach towards imagining imprisonment and organising its institutional practice.

a. Ideological transformation

In the ideological sphere, a cosmopolitan spirit can help us to challenge the conventional ways of defining the role of imprisonment in the polity and society by placing this issue within the broad context of encounters with strangers. In the first place, it urges us to suspend the assumption that the prison is, and is bound to be, an indispensable part of the reality of the world that we live in. As we can note from the investigation of those mainstream imaginaries of imprisonment, there is no shortage

of critical arguments about various negative aspects of imprisonment, but most of them are made from the standpoint of restricting the scale of imprisonment or remedying its detrimental consequences. However, at the ideological level, the prison is taken as an institution of penal power which is acquiesced in: which, although ugly, is required by society. In this peculiar respect, the conventional liberal approach is not much different from the populist views of prisons. A cosmopolitan vision, instead, questions whether incarceration constitute the best approach to treating those problematic people, who are defined by the formal criminal justice procedure as lawbreakers but whose actual outsider's identity and whose own moral appeals are largely disregarded and suppressed by the official discourses about culpability, just desert and rehabilitation. It urges us to identify in such practices a tremendous form of injustice and to seek for alternative ways of addressing the issues relating to the maintenance of the legal and moral order of society. As many cosmopolitan theorists have advocated, the ethics of hospitality and respect for difference should guide the ideological transformation regarding the issue of imprisonment. Its focus is then to explore a just way of promoting unsuppressed co-existence between social groups whose living conditions and moral points of view are deeply divergent. This task will have to directly confront the current use of incarceration as a means of managing particular social groups rather than others and denounce it as contradictory to the cosmopolitan principle. Those who actually constitute 'the others' and strangers of mainstream society should be acknowledged in terms of their particular living experiences and moral perspectives. Their voices should be heard and reflected in the communal effort to strive for cosmopolitan co-existence, which will be able to challenge the unilaterally-determined official criminal justice discourses. What is favoured in these cosmopolitan prospects is more cooperation and communication oriented praxis in negotiating the relationship between an equally-treated 'us' and 'them', while what is strictly monitored is the use of coercive means: it will not be proved if the social groups who are most affected do not get sufficient chances to engage in the decision making procedure.

We can note that the cosmopolitan appeal is still quite general at the ideological level and, needless to say, there will be numerous questions which will need to be

answered when it is to be implemented at the practical level. As we argued in the previous section, the ultimate contours of a reformative scheme addressing the current imprisonment predicament should not be thought of as a pre-decidable matter but need to be worked out stage by stage in close interaction between the innovations within the imaginary spectrum and the transformation of existing patterns of practice. The particular value of the cosmopolitan vision then lies in its strength in terms of motivating a reconfiguration of the dominant penological ideology. To some degree, it shares the standpoint of prison abolitionists; but rather than being confined to a prison-centred type of argumentation, it seeks a holistic approach towards imagining the normative order pertaining to us and them, the powerful and the socially marginalised. On such a basis, it opens up pathways to strive for a minimised use of coercive and custodial measures and an expansion of diversified and innovative forms of justice that are in accordance with the cosmopolitan spirit.

In respect of ideological guidance, we may yet need to go beyond the inclination to advocate a closed scheme of ‘cosmopolitan rights’ for non-citizens and ‘conditional’ citizens. Indeed, to guarantee that the suppressed and disadvantaged ‘others’ get proper legal protection is of great importance to the endeavour of correcting the prominent shortcomings of the current regimes that are responsible for the imprisonment complex. However, this should by no means be the conclusion of cosmopolitan imaginaries. What makes the cosmopolitan approach appealing to our investigation based on introspective normativity lies in its potentiality of creating the necessary conditions for re-normalising the ideological sphere with regard to incarceration. Thus, to undertake a cosmopolitan venture in the penal field, it is of particular significance to be sensitive and to capture the emerging forms and possibilities of interaction, communication and ‘action-together’ between the mainstream societal groups (also including the academics) and the under-recognised ‘others’, and to seek a communal construction of normative understanding of the exercise of custodial power. This effort should aim at a more dynamic and ever-innovating ideal than establishing a fixed doctrinal moral or legal system to guarantee tolerance for ‘strangers’.

What the introspective normative demands of cosmopolitan imaginaries require is in particular the consciousness of the undermined universal horizon of the moral foundations of imprisonment. This urges us to resist the temptation to speedily embrace or invent any universal ‘solutions’ that will turn out to be close-ended and which by no means reflect the complex realities of the current imprisonment field. On the contrary, it encourages us to adopt a ‘confrontation’ attitude: that is, to face the deprivation of universal normativity without distorting or underplaying it, and, while maintaining faith in the ultimate result, to accept that re-normalising the imprisonment sphere is a dynamic process instead of a fixed scheme that has been set up ready for pursuing.

In sum, at the ideological level, the cosmopolitan imaginary points in the general direction of the de-centralisation and minimization of imprisonment in treating the socially marginalised and under-recognised groups and of the re-normalisation of the whole spectrum in the process of re-inventing social relationships and forms of inter-communication and coexistence within a pluralistic society like the UK.

b. Sentencing rationale and guidelines

Apart from its ideological appeal, the cosmopolitan perspective can also inspire us to review some more specific aspects of the current imprisonment systems and to set up reformation agendas.

Firstly, the judiciary practice which directly delivers the sentences of prison terms needs to be re-oriented in order to encompass more elements of cosmopolitanism and to address the particular appeal to justice from the side of the socially excluded others. Thus in deciding whether or what kind of custodial sentences the convicted should serve, the courts must go beyond the formal criminal justice rationale which centres on establishing culpability and the corresponding punishment, and must go beyond the traditional utilitarian consideration that is based on the calculation of social gains related to the effects of incapacitation or rehabilitation; they should instead maintain the particular consciousness that those under prosecution are from

deeply divergent backgrounds and that to enforce a single-dimensional code of penalties can engender great injustice in such cases. The ‘strangers’ should be given appropriate opportunities to voice and engage in the procedure of determining the penal treatment and the reasons behind that.

More crucially, the judiciary practice needs to be entirely aware of the predicament regarding the normative foundations underpinning the systemic imposition of imprisonment in the contemporary UK and should try to avoid the nihilistic traps in generating and applying their sentencing guidelines. This means that the criminal judiciary should recognise that non-reflexive adherence to the established routines of sentencing practice and the working ethics of ‘insofar as we do what is required by criminal law and legislation, our sentences are justified’ could not stand as an unassailable choice before the examination of introspective normativity. It would turn out to be detached from the troubling realities in the imprisonment sphere and in turn might result in further consolidation of the nihilistic dilemma in the field.

To recognise the deficiencies in universal normativity has a particular bearing on the judiciary’s decision-making regarding the delivering of the sentence of imprisonment. It does not only lead to a mentality of moderation and cautiousness, but also tends to promote an innovative and experimental spirit: those sentences which are less constrained and which involve better potential to benefit the interaction and action-together of those custodial-targeted groups and the mainstream society should take a more prominent role within the criminal justice scheme. As we mentioned in the preceding discussions of the innovative direction of populist imaginaries, a variety of occasions can be created and employed to enhance the understanding and inclusion of ‘strangers’. The judicial guidelines may prioritise options outside prison, as there will be better chances of achieving these goals than behind bars. Community service and various forms of restorative justice, for example, can function well or can easily be adjusted to produce an interactive space that is vital to the prospects of re-normalised imprisonment imaginaries and praxis.

c. Incarceration settings

Whereas the major concern of the cosmopolitan approach is connected with re-orienting the ideological significance of imprisonment and redefining its role within the contemporary pluralistic social context, it also sees the importance of reforming the existing settings where hundreds of thousands of prisoners are detained at the present time. However, in this respect, its goal is not any type of ‘model prison’ or ‘ideal prison’, as the essence of systemically imposed incarceration and incapacitation (which remains in even the most thoughtful prisons) can hardly accord with the ultimate cosmopolitan aspiration of a world in which ‘strangers’ are included in an embracing hospitality and their ‘differences’ are respected or at least tolerated. The idea of imposing restrictions on basic liberty, despite consideration of all the possible justifications, should be recognised as intrinsically heterogeneous to the cosmopolitan value of being open and hospitable to the others even if that is never risk free.¹⁵ Thus any reformative initiative must be advanced with a peculiar consciousness of its ‘incompleteness’: that its effective implementation will not form the ultimate end in itself but will be the start for the undertakings of the next stage.

Secondly, the cosmopolitan perspective requires that prison reformation schemes to incorporate strategies which aim at generating an appropriate interactive space for the social and discursive connections between groups of inmates and the general public. The existing prison reform programmes are often dominated by utilitarian designs (the management of re-offending risks, rehabilitative effects, fiscal factors, etc.) or by human rights and humanitarian considerations (hygiene and diet conditions, medical care and educational opportunities, prisoners’ right to vote, etc.). In the cosmopolitan vision, the conventional reform agendas are seen to fail to recognise the importance of making prison settings into a site for normative innovation that is responsive to the consciousness of ‘incompleteness’. Such innovative potentialities would be dismissed if prisons were organised as entirely closed institutions. The maintenance of adequate connection and interaction between the inmates, the community and the general public is significant for achieving a non-

¹⁵ See Derrida’s (2001) interpretation of the unconditional dimension of hospitality.

demonised view of the strangers and is vital to envisaging a future of re-normalised understanding and consensus building with regard to the use of custodial measures.

A variety of strategies can be adopted to serve such an end. As we mentioned in the discussion of renormalized mainstream penal imaginaries, there are already some innovative and experimental programmes that are being carried out in certain prisons in the UK. One of the preeminent examples is the prisoner's art project.¹⁶ The crucial point is that there should be more experiments within this realm so that effective means to promote communication and action-together between prisoners and the society can be identified and systemically incorporated into the prison settings.

d. Community and societal transformation

It is also worthwhile to emphasise the point that there is no 'cosmopolitan penal policy' or 'cosmopolitan prison policy' per se, for in nature the cosmopolitan approach is first of all concerned with the desirable characteristics of the socio-political relations existing within the pluralistic world that we inhabit. A 'cosmopolitan turn' facilitated within a broad community and societal spectrum would turn out to be more fundamental than any progressive policy changes inside custodial institutions in terms of confronting the normative as well as practical predicament in the contemporary imprisonment field.

In this respect, the central objective of a cosmopolitan social policy is to identify the various barriers, especially those that are structurally produced, of free and effective communication between different social groups (the mainstream and the marginalised) and to find pertinent means to remove or at least to remedy them. It is worth noting that this task does not only require effort to reveal the existing social pathologies that are responsible for the social and discursive segregation of different groups of 'strangers', but also experiments in terms of innovative tactics to promote

¹⁶ See Lyn Tett et al. (2012)'s documentation and analysis of an art project in Scottish prisons. Also see the discussion in the previous section of the re-normalising of the mainstream imaginaries of imprisonment.

the reconfiguration of the partially constructed discursive and imaginary forum itself. For example, there is a rich body of research which uncovers the linkage between socio-economic inequality and the different forms of discursive power and which, specifically, illuminates the impact of the post-welfarist politics and social changes on the circumstances and discursive status of the lower-class population in the UK (e.g. Wacquant, 2009a & 2009b; Morris, 1994; Field, 1989). The cosmopolitan approach agrees that such structural and political causes of discursive disparity need to be addressed and that the achievement of a desirable social order of unsuppressed intercommunication depends crucially on the de-marginalisation of the poor and the unemployed social sections in terms of their economic status. But, in the meantime, it should also view the current circumstances as opportunities as well of stimulating innovative forms of interaction and dialogue. The ‘alternatives’, such as independent film-making, stand-up comedy performance, protests of the new ‘commons’ and so on, have already been practiced in various spheres and in effect constitute challenges to the normative closure of the mainstream imaginaries in the contemporary social and economic order.¹⁷ They signify the possibility that the efforts made to renew the ideological routines of mainstream society can actively participate in the process of promoting a more equal and less segregated social atmosphere. This also means that there are a wide range of strategies, which are by no means confined to the government’s social policies, of facilitating community and societal transformation that might lead in a more cosmopolitan-favouring direction.

It is noteworthy that such prospects cannot be exhausted by any static schemes or predictions, for they do not aim at a lifeless equalitarianism but a colourful coexistence of differences and a dynamic inclusion of diversity and plurality. To achieve such objectives, the internal structure of many of the contemporary gated communities and of the mainstream society, as well as their ways of connecting with the excluded social sectors, will have to be transformed in the meantime by the prevalence of the cosmopolitan style of consciousness and imaginaries. Under such circumstances, we can expect the emergence of a revitalised normative consensus across society with regard to the use of coercive powers such as imprisonment.

¹⁷ See the discussion of Campbell (2011) on the implications of stand-up comedies in the post-9/11 context, and also see Žižek’s (2010) speech delivered at Wall Street.

iv. Discussion

From the above discussion we may be able to form a general idea of how an enriched cosmopolitan imaginary might respond to the challenges within the current imprisonment field in the UK. We may also note that this attempt is not oriented towards offering a comprehensive paradigm as a substantive substitute for the mainstream imaginaries of imprisonment examined in the last three chapters, but instead focuses on the pathways towards improvement, with a view to overcoming the limits of closed normativity and creating and maintaining a dynamic sphere for normative innovation in the field.

Thus the cosmopolitan imaginary of imprisonment is better described as one with an inviting spirit: it is sensitive to the fact that the contemporary normative spectrum underlying custodial practice is fundamentally divided and fragmented, yet it rejects the nihilistic approaches to coming to terms with it, such as the detachment and oblivion patterns that we observed in the current mainstream forms of imaginaries. Instead it undertakes the task of confronting the normative vacuum within the imprisonment sphere and keeping this particular awareness of ‘incompleteness’ in the endeavour of re-normalising the imaginaries of imprisonment. Thus, unlike the moral reconstruction project as interpreted by Durkheim, our pursuit of the re-normalising of the custodial sphere can no longer rely on a homogenous approach to the acquiring or reviving of one single normative paradigm and using it to settle the dilemmas of imprisonment once and for all. It is a task which must be carried out in the communicative ‘action-together’ of actors who are from divergent traditions and backgrounds. Accordingly, the focus of the performance of introspective normative analysis then needs to shift from that of rationalising and re-establishing the moral content of shared religious traditions in a secular moral education project to making the best of the ‘encounter with strangers’ and seeking normative insights from interaction and dialogue with the moral ‘others’. This thus determines that the cosmopolitan perspective that we advocate is a dynamic one which is open to

innovative possibilities in the light of normative performance within the imprisonment field.

V. Conclusion

Based on the framework of introspective normativity, our investigation into the contemporary imaginaries of imprisonment should be considered as an ongoing undertaking which is open to continuous changes and innovations in the penal imaginary spectrum. Nevertheless, it is helpful to sum up what this thesis has accomplished so far and to identify its key findings at the present stage.

As we try to demonstrate in the first chapter, our research project is motivated by the aspiration for meeting the normative challenges in the contemporary imprisonment field in the UK, which is characterised by the decline of universal normativity and the fragmentation of heterogeneous post-welfarist approaches. We find that the traditional ways of promoting the normative understanding of imprisonment - the 'normativist' approach and the sociology of punishment - involve crucial limitations in fulfilling such a task. They either adopt an orthodox approach to prescribing certain specific normative visions to a deeply pluralistic discursive spectrum, or seek to avoid direct normative engagement. And both of the methodological perspectives are beset by the dichotomy between the normative sphere and the factual sphere. In those cases, the predicament concerning the decline of universal normativity in the imprisonment field cannot be addressed pertinently.

Our alternative methodological framework has been developed with a view to overcoming such limitations and making fruitful the task of doing the normative in the contemporary imprisonment field. It is mainly a hermeneutic approach which is centred on the concept of introspective normativity. In Chapter 2, we have showed how the key elements of this methodological perspective are established. Durkheim's methodological insights, particularly those relating to his social-historical hermetical approach, have provided the major inspirations and theoretical basis for the construction of our methodological framework. The chief merit of Durkheim's

social-historical hermetical approach, as we have interpreted and analysed in Chapter 2, is that it illuminates a pathway to the bridging of the scientific study of norms and the pursuit of moral construction in modern society. In this regard, it has the advantage over the normativist approach and the positivist approach. And our analysis also shows that Durkheim's methodological insights and their merit are not necessarily bound up with his own project of moral reconstruction, but that they can be modified to apply to a post-universalist context. For this reason, we take Durkheim's work as the key methodological sources for our research project.

Based on the interpretation and reconstruction of Durkheim's social-historical hermeneutical approach, we have developed our own research framework which is centred on the idea of introspective normativity. It is designed particularly to meet the needs for addressing the normative dimensions of post-welfarist imprisonment and responding to the predicament relating to the decline of universal normativity in the field. Like Durkheim's social-historical hermeneutics, our methodological scheme seeks to overcome the limits of the dichotomy between the factual and the normative and to pursue an integral inquiry of the reality exposure and the normative innovation. At the same time, because it is mainly designed to address a post-universalist imprisonment context, it has its own analytic focuses and objectives that are different from those of Durkheim's moral reconstruction project. Instead of aiming to establish any new essentialist universal paradigm for custodial practices, it is oriented towards analysing diverse types of the contemporary imaginaries of imprisonment in terms of their performances of introspective normativity and uncovering their particular nihilistic/innovative tendencies in those respective cases. And its primary concern is to improve the normative performances of imaginaries of imprisonment in a post-universalist context so that the normative enterprise in the field can be pushed forth towards a healthy direction.

Following the elaboration of our methodological framework, we examined three representative types of imaginaries of imprisonment (from Chapter 3 to Chapter 5). The major findings of our examination have already been summarised in an earlier section (Section II) of this chapter. On the basis of these findings, we have also

achieved a general evaluation of the normative performances of the post-welfarist imaginaries of imprisonment in the UK. It shows that the peculiar tendency of 'escaping from being normative' is immanent in a number of contemporary imaginaries of imprisonment (despite their innovative potentials in various cases). In terms of the performance of introspective normativity, it is a problem of normative closure or penal nihilism.

Our examination also suggests that the problem of normative closure is tied up with the problem of social segregation which occurs at various levels in contemporary society of the UK and which has resulted in the suppression of differences and plurality in the penal-discursive realm and, accordingly, in the constraint upon normative innovation. We conclude that the re-normalising of the imaginaries of imprisonment needs to be pursued in tandem with the de-segregating of the custody-targeted social groups and with the promotion of effective social interactions and 'action together' across different social sectors.

In response to the problem of normative closure and to the need for normative innovation in the post-welfarist imprisonment field, we advocate a cosmopolitan approach, which places at its heart openness towards diversity and plurality, hospitality to 'strangers' and inclusion of the 'others'. And we propose that such an approach can help to reject the normative closure that is implied in those mainstream types of imaginaries of imprisonment as we have examined, and that they can contribute to the task of re-normalising the contemporary penal imaginary sphere in a constructive way. In this case, it does not aim to reveal any universal ideal of imprisonment, but seeks to nurture a peculiar consciousness which is keen to detect the counterproductive approaches to imagining imprisonment and to prepare the necessary conditions and premises of normative innovation in the imprisonment field. Under this cosmopolitan perspective, we may not be able to acquire immediate answers to all the questions with regard to incarceration, but we can envisage a wide range of transformations in the field which are meaningful and dispensable to their achievement.

Glossary of key terms

Penal Imaginaries

These are the social imaginaries in terms of which penal phenomena are conceived and comprehended. In the context of our research, they consist of three interconnected dimensions: firstly, the cognitive dimension, which refer to the categories, concepts, metaphors and theories that are employed in them which give meaning to penal practices and penal relations; secondly, the socially realistic dimension, which means that the penal imaginaries are not abstract or static notions and ideas, but active forces that enable the practices and shape the realities in the penal domain; thirdly, the normative dimension, which means that penal imaginaries imply deeper normative notions and presumptions about the purposes and significances of penal practices and that they also imply various mechanisms and tactics to establish the validity of their respective normative claims and perspectives.

Normative Performances of Penal Imaginaries

These refer to the ways in which different approaches in the penal imaginaries establish the validity of their respective normative claims in relation to specific penal issues as well as their general penological perspectives. In the context of our research, the decline of universal normativity within the imprisonment field is considered as presenting a major challenge to the contemporary penal imaginaries in terms of their normative performances.

Universal Normativity

This is related to the allegiance to certain universal ideals for arranging the practices in a given domain of society. In the context of our research, we mainly use the term to refer to the faith in a holistic scheme of organising the practices of imprisonment, which is usually underpinned by a specific vision of good society.

In the thesis, we link the status quo of imprisonment in the UK with the decline of universal normativity in the field on the basis that the faith in a holistic solution to imprisonment has observably been fading since the downfall of penal welfarism. And this is viewed by us as providing a crucial context for the normative performances of imaginaries of imprisonment, because under such circumstances they can no longer depend on a viable universal orthodox system to validate their respective normative claims, but they have to resort to the performance of introspective normativity to establish their validity in relation to competing forms of penal imaginaries.

Introspective Normativity

This is related to the particular performances of penal imaginaries in symbolising the post-universalist penal realities and constructing their distinctive normative visions of imprisonment. It concerns how, *without* the backing of any conventional penal ideological beliefs and in some cases in the *absence* of any essential allegiance to such belief systems' desirability, the validity of differential normative claims gets established in their respective forms of penal imaginaries.

The hermeneutic examination based on this idea seeks to shed light on whether and to what extent certain particular type of imaginaries of imprisonment can manage to assume the normative role which the traditional universalist penal ideologies used to play. By exposing that, it helps us to detect the innovative as well as the counterproductive tendencies within the normative performances of those imaginaries, and accordingly it helps us to advance the normative endeavour within the imprisonment field in a healthier and more fruitful direction.

Ideal Types of Introspective Normativity

These involve the abstraction of distinctive patterns of the performance of introspective normativity in ideal cases. They are used to specify the particular ways in which different types of penal imaginaries seek to establish their respective normative visions and validate their normative claims under post-universalist conditions. Our research mainly involves four such ideal types, including *detachment*, *oblivion*, *confrontation* and *transformation* (a full elaboration of them is given in Chapter 2 (III.iii.d)). Because they are deeply indicative of the nihilistic/innovative tendencies of the normative performance of penal imaginaries in dealing with the predicament of the decline of universal normativity, they are applied in our thesis as an analytic-evaluative instrument to unpack a variety of concrete types of imaginaries of imprisonment.

Penal Nihilism

This refers to the counterproductive tendency existing within penal imaginaries, in terms of their performances of introspective normativity, which result in the arbitrary exclusion of diverse competing perspectives within the imprisonment field and in the restriction of their own prospects of normative innovation. It amounts to the imposition of closure on the normative performance of penal imaginaries. The two ideal types of introspective normativity – *detachment* and *oblivion* – are viewed by us as examples of penal nihilism.

Normative Innovation

In opposition to penal nihilism, normative innovation stands for the inclusive and innovative tendencies of penal imaginaries in terms of their performances of introspective normativity. In the context of our research, this represents the

innovative endeavour to meet the challenge of the decline of universal normativity and to revitalise the normative enterprise within the imprisonment field.

Penal Welfarism

The complex of the praxis and the ideologies that which dominated the penal spheres in the UK and the US in the post-World War II era and which declined in both these countries during the 1970s amid intense criticisms of the effectiveness of its functioning and of its underlying philosophy. Penal wefarism is characterised by its commitment to individualised rehabilitation, penal expertise, welfare and integration of offenders. In the context of our research, it represents the latest (if not the last) universal paradigm which has guided the practices of imprisonment.

Cosmopolitanism

This refers to those systems of ideas which place the relationship with ‘strangers’ at the centre of their concerns. There are diverse cosmopolitan approaches; our research mainly links a particular strand of cosmopolitan ideas to the normative performance of imaginaries of imprisonment. It is one which advocates the embrace of differences, hospitality towards ‘the others’ and openness to pluralistic human experiences.

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